(15)

Supreme Court, U.S.
FILED
NOV 13 2000

No. 00-24

IN THE

Supreme Court of the United States

PGA TOUR, INC.,

Petitioner,

v.

CASEY MARTIN,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JULY 5, 2000
CERTIORARI GRANTED SEPTEMBER 26, 2000

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US COURT OF APPEALS
FOR THE NINTH CIRCUIT

98-35309

CASEY MARTIN
Plaintiff-Appellee

v.

PGA TOUR INC.,
a Maryland corporation
Defendant-Appellant

DOCKET ENTRIES

DATE	PROCEEDINGS
3/25/98	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): NO. Setting schedule as follows: appellant's designation of RT is due 3/30/98; appellee's designation of RT is due 4/9/98; appellant shall order transcript by 4/20/98; court reporter shall file transcript in DC by 5/20/98; certificate of record shall be filed by 5/27/98; appellant's opening brief is due 7/6/98; appellees' brief is due 8/5/98; appellants' reply brief is due 8/19/98; [98-35309] (sm) [98-35309]
3/25/98	Filed George J. Cooper for Appellant PGA Tour, Inc. Civil Appeals Docketing Statement served on 3/20/98 (to CONFATT) [98-35309] [98-35309] (sm) [98-35309]
4/2/98	Filed order CONFATT (LW) Case referred to Confatt for assessment conference only. Conference to be on 4/28/98 at 2:00 pm pacific, by phone. [98-35309] (em) [98-35309]

DATE	PROCEEDINGS
4/16/98	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N) : NO. Setting cross appeal briefing schedule as follows: appellant's designation of RT is due 4/16/98 in 98-35367; appellee's designation of RT is due 4/27/98 in 98-35367; appellant shall order transcript by 5/6/98 in 98-35367; court reporter shall file transcript in DC by 6/8/98 in 98-35367; certificate of record shall be filed by 6/15/98 in 98-35367; first cross-appeal brief is due 7/6/98; second cross-appeal brief is due 8/17/98; third cross-appeal brief is due 9/16/98; optional cross-appeal reply brief is due 9/30/98 [98-35367, 98-35309] (sm) [98-35309 98-35367]
6/3/98	Filed order CONFATT (CG) The court is advised that pltf does not intend to pursue his cross-appeal. Unless objection is filed within 14 days of the filing date of this order, appeal no. 98-35367 will be deemed dismissed voluntarily pursuant to FRAP 42b. with each side bearing its own costs. Dismissal will be without prejudice to pltf's pursuing any alternative grounds for affirmance in his brief in the primary appeal. A copy of any objection should be served on the mediator in Seattle. Case not selected for- program. Briefing schedule previously set by the court is vacated. In appeal no. 98-35309, appellants' brief, excerpts of record are due 7/7/98 ; appellees' brief due 8/18/98 ; appellants' reply brief due 9/16/98 [98-35309] (em) [98-35309 98-35367]

DATE	PROCEEDINGS
6/29/98	recd notice of appearance of Roy Reardon as counsel for plaintiff Casey Martin [98-35309, 98-35367} (em) [98-35309 98-35367]
7/6/98	Filed original and 15 copies U.S. Golf Association amicus brief of 39 pages ; served on 7/2/98 (Note: see addendum to brief re consent of parties) [98-35309, 98-35367] (em) [98-35309]
7/8/98	Filed original and 15 copies Appellant PGA Tour, Inc. in 98-35309 opening brief (Informal: n) 53 pages and five excerpts of record in 1volumes; served on 7/6/98 [98-35309] (em) [98-35309]
8/17/98	Filed certificate of record on appeal RT filed in DC NT [98-35309, 98-35547] (em) [98-35309 98-35547]
8/18/98	Filed original and 15 copies amicus Klippel-Trenaunay in 98-35309's brief of 35 pages served on 8/17/98 (see stipulation consenting to filing of amicus at back of brief) [98-35309] (em) [98-35309]
8/19/98	Filed original and 15 copies appellee Casey Martin in 98-35309's 62 pages brief, 2 Exc. vols; served on 8/17/98 [98-35309] (em) [98-35309]
8/21/98	Filed original and 15 copies USA's amicus brief of 37 pages; served on 8/18/98 [98-35309] (em) [98-35309]
8/24/98	Received letter dated 8/17/98 from U.S. Senators Tom Harkin and Bob Dole re: supporting Pltf/aple Casey Martin's Brief. (RECORDS FOR MERITS PANEL) [98-35309] (em) [98-35309]

DATE	PROCEEDINGS
8/24/98	Received letter dated 8/21/98 from American Association on Mental Retardation et al, re: supporting pltf/aple Casey Martin. RECORDS FOR MERITS PANEL [98-35309] (em) [98-35309]
8/25/98	Received from Western Law Center for Disability Rights letter dated 8/17/98 re: supporting amicus brief filed by Klippel-Trenaunay; served 8/17/98 RECORDS FOR MERITS PANEL [98-35309] (em) [98-35309]
9/1/98	Filed motion of defendant and deputy clerk order: Deputy Clerk: CB) Deft's motion to consolidate nos. 98-35309 and 98-35509 is granted. The three above-captioned appeals shall be calendared before the same panel for disposition. The current briefing schedules remain in effect in 98-35309, 98-35509, 98-35547 (Motion recvd 8/27/98) [98-35309, 98-35509, 98-35547] (em) [98-35309, 98-35509 98-3554 7]
9/21/98	Filed original and 15 copies PGA Tour, Inc. in 98-35309 reply brief, (Informal: n) 40 pages; served on 9/16/98 [98-35309] (em) [98-35309]
10/2/98	Filed Casey Martin in 98-35309 additional citations, served on 10/1/98 RECORDS FOR MERITS PANEL [98-35309] (em) [98-35309]
10/9/98	Filed Appellant PGA Tour, Inc.'s motion to strike whole of the aple's addl cites, served on 10/6/98 [WIP/PRO..C] [98-35309] (ot) [98-35309]

DATE	PROCEEDINGS
10/16/98	Filed order (Deputy Clerk: cag) Appellant's motion to strike appellee's supplemental citation of authority is GRANTED. Appellee's previously received supplemental citation of authority shall be stricken. Within 14 days from the date of this order, appellee may resubmit supplemental citations which comply with FRAP 28 (j). [3544333-1] [98-35309, 98-35367, 98-35547] (sm) [98-35309 98-35367 98-35547]
10/21/98	Received Casey Martin's additional citations, served on 10/20/98 (RECORDS FOR MERIT PANEL) [98-35309] (sm) [98-35309]
11/17/98	Filed PGA Tour, Inc. additional citations, served on 11/11/98 RECORDS FOR MERITS PANEL [98-35309, 98-35509] (em) [98-35309 98-35509]
1/12/99	Received Roy L. Reardon for Appellee Casey Martin in 98-35309 letter dated 1/11/98 re: counsel Reardon who will argue for aple Casey Martin, will not be available for oral argument prior to 3/15/99 because he will be out of the country until that date. (CALENDAR) [98-35509, 98-35367, 98-35509, 98-35547] (em) [98-35309 98-35367 98-35509 98-35547]
3/1/99	Calendar check performed [98-35309, 98-35509] (aw) [98-35309 98-35509]
3/8/99	Calendar materials being prepared. [98-35309, 98-35509] [98-35309, 98-35509] (aw) [98-35309 98-35509]
3/15/99	CALENDARED: Portland May 4, 1999 9:00 a.m. [98-35309, 98-35509] (mw) [98-35309 98-35509]

DATE	PROCEEDINGS
4/12/99	Filed Amicus USA in 98-35309's motion to participate in oral argument and extend time for oral argument [98-35309] served on 4/9/99 [3651998] FAXED PANEL (em) [98-35309]
4/13/99	Filed order (Deputy Clerk: GB) The unopposed motion by amicus USA is granted. Oral argument by the parties shall be extended to 25 minutes per side. The US shall be permitted to use 10 minutes of aple's argument time. (phoned out) [98-35309, 98-35509] (em) [98-35309 98-35509]
4/16/99	Filed Casey Martin in 98-35309 motion to supplement the supplemental excerpts of record; or alternatively, for court to request pltf's trial exhibit 98; with enclosed video (5 copies); served 4/15/99 FEDEX PANEL w/copy of video. [98-35309] (em) [98-35309]
4/22/99	Filed Appellant PGA Tour, Inc. in 98-35309 response opposing appellee's motion to supplement record on appeal [3655649-1] served on 4/19/99 FAXED PANEL on 4/26/99 (Note: earlier received in promo) [98-35309] (em) [98-35309]
4/23/99	Filed order (Deputy Clerk: GB) Aple's motion to supplement the record with the videotape is granted. (phoned out) [98-35309, 98-35509] (em) [98-35309 98-35509]
5/4/99	ARGUED AND SUBMITTED TO William C. CANBY, Thomas G. NELSON, Jeremy Fogel [98-35309, 98-35509] (br) [98-35309 98-35509]
5/24/99	Filed PGA Tour, Inc. in 98-35309 and in 98-35509 additional citations, served on 5/21/99 FEDEX PANEL [98-35309 98-35509] (em) [98-35309 98-35509]

DATE	PROCEEDINGS
5/26/99	Filed Casey Martin in 98-35309 and in 98-35509 additional citations, served on 5/24/99 FEDEX PANEL [98-35509, 98-35509] (em) [98-35309 98-35509]
2/18/00	Filed PGA Tour, Inc. in 98-35309 additional citations, served on 2/17/00 FAXED PANEL [98-35309] (em) [98-35309]
3/6/00	FILED OPINION: AFFIRMED (Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published. William C. CANBY, author; Thomas G. NELSON; Jeremy Fogel.) FILED AND ENTERED JUDGMENT. [98-335309, 98-35509] (em) [98-35309 98-35509]
3/20/00	Filed Appellee Casey Martin in 98-35309 and in 98-35509 bill of costs, served on 3/17/00 [98-35309, 98-35509] (em) [98-35309 98-35509]
3/28/00	MANDATE ISSUED; COSTS TAXED FOR $1,385.00 [98-35309, 98-35509] (em) [98-35309 9-35509
4/3/00	Filed Casey Martin's motion to for attorney(s)' fees served on 3/31/00 [3881717] (to PANEL on 04/18/00) (mhf) [98-35309 98-35509]
4/17/00	Filed Appellant PGA Tour, Inc.'s response opposing appellee's motion for attorneys' fees [3881717-1] served on 4/14/00 (PANEL) [98-35309] (sm) [98-35309]
4/20/00	Filed Appellee Casey Martin's reply memorandum in support of appellee's motion for attorneys' fees [3881717-1], served on 4/19/00 (PANEL) [98-35309, 98-35509] (sm) [98-35309 98-35509]

DATE	PROCEEDINGS
4/26/00	Filed order (William C. CANBY, Thomas G. NELSON & Jeremy Fogel) plaintiff-aple Casey Martin is awarded atty's fees on appeal. The determination of an appropriate amount of fees on appeal is referred to the court's special master, Appellate Commissioner Peter L. Shaw, who shall conduct whatever proceedings he deems appropriate, and who shall have authority to enter an order awarding fees. The order is subject to reconsideration by the panel. [98-35309, 98-35509] (jr) [98-35309 98-35509]
5/22/00	Filed Supreme Court order (SC Date: 5/17/00): The application for an extension of time within which to file a petition for a writ of certiorari has be presented to Justice O'Connor, who on 05/17/99 extended the time to and including 07/05/00. (CASEFILE) [98-35309, 98-35509] (sm) [98-35309 98-35509]
7/10/00	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 00-24 filed on 7/5/00. [98-35509, 98-35509] (em) [98-35309 98-35509]
7/27/00	Filed order (Appellate Commissioner) On 3/6/00 the court affirmed the DC's judgment that the ADA applies to participation by a disabled person in a sports competition sponsored by a private, nonprofit organization. (CITES) In an order filed 4/26/00 the court referred pltf-aplt Martin's motion for atty. fees to the Appellate Commissioner for determination. Martin seeks atty. fees pursuant to section 12205 of the ADA which provides for an award of atty. fees to a "prevailing party". On 7/5/00, deft aple PGA Tour, Inc.

DATE	PROCEEDINGS
	filed a petition for a writ of certiorari in the Supreme Court. Accordingly, Martin's motion for atty. fees shall be held in abeyance pending the disposition of PGA Tour's petition for cert. and, if petition is granted, the Supreme Court's decision. Within 14 days after Supreme Court's denial of the petition, or, if the petition is granted, the judgment, Martin shall file a status report in this court and move to renew or withdraw the motion for atty. fees. The clerk shall forward Martin's status report and motion to the Appellate Commissioner.) ( ) [98-35309, 98-35509] (em) [98-35309 98-35509]
10/2/00	Received notice from Supreme Court, petition for certiorari GRANTED on 9/26/00. Supreme Court No. 00-24 (PANEL & App. com) (em) [98-35309 98-35509]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

97-CV-6309

CASEY MARTIN

Plaintiff

v.

PGA TOUR INC.,
a Maryland corporation

Defendant

DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
11/26/97	1	COMPLAINT and JURY TRIAL DEMAND (Cause Code: 42:12101) Receipt # 162918) (ctw*)
11/26/97	2	SUMMONS ISSUED as to Defendant PGA Tour, Inc (ctw*)
11/26/97	3	MOTION by Plaintiff Casey Martin FOR TEMPORARY RESTRAINING ORDER, FOR PRELIMINARY INJUNCTION Oral Argument Requested (ctw*)
11/26/97	4	AFFIDAVIT by Plaintiff of Casey Martin re: MOTION FOR TEMPORARY RESTRAINING ORDER [3-1], MOTION FOR PRELIMINARY INJUNCTION [3-2] (ctw*)
11/26/97	5	AFFIDAVIT by Plaintiff Casey Martin of William Wiswall re: MOTION FOR TEMPORARY RESTRAINING ORDER, [3-1]

DATE		PROCEEDINGS
		MOTION FOR PRELIMINARY INJUNCTION [3-2] (ctw*)
11/26/97	6	RECORD OF ORDER by Judge Thomas M. Coffin SETTING MOTION FOR TEMPORARY RESTRAINING ORDER [3-1] on oral argument calendar of 1:30 11/28/97, SETTING MOTION FOR PRELIMINARY INJUNCTION [3-2] on oral argument calendar of 1:30 11/28/97 (counsel notified) (ctw*)
11/26/97	7	ORDER Discovery Schedule discovery ddl set for 3/26/98 pretrial order deadline set for 4/27/98 (ctw*)
11/28/97	8	MOTION by Defendant PGA Tour Inc TO DISMISS, TO CHANGE VENUE (ctw*) [Entry date 12/01/97]
11/28/97	9	RECORD OF PROCEEDINGS before Judge Thomas M. Coffin DENYING MOTION TO DISMISS [8-1] DENYING MOTION TO CHANGE VENUE [8-2], GRANTING MOTION FOR PRELIMINARY INJUNCTION [3-2] (counsel notified) Court Rptr Amanda Essner (ctw*) [Entry date 12/01/97]
12/8/97	10	ORDER by Judge Thomas M. Coffin MOTION FOR PRELIMINARY INJUNCTION [3-2]: Defendant is enjoined and required to permit plaintiff to use a golf cart during the practice and competitive rounds of the 1997 PGA Tour Qualifying Tournament Final Stage to be held in Orland Florida on 12/1-

DATE		PROCEEDINGS
		12/8/97 Signed 12/8/97, nunc pro tunc 11/28/97 (counsel notified) (ctw*)
12/15.97	11	APPLICATION by Defendant PGA Tour Inc FOR ATTORNEY William J. Maledon and Scott W. Rodgers TO APPEAR PRO HAC VICE (ctw*)
12/15/97	12	ORDER by Judge Thomas M. Coffin GRANTING MOTION FOR ATTORNEY William J. Maledon and Scott W. Rodgers TO APPEAR PRO HAC VICE [11-1], GRANTING MOTION [11-2] Signed 12/15/97 (counsel notified) (ctw*)
12/19/97	13	AMENDED COMPLAINT [1-1] and JURY TRIAL DEMAND by Plaintiff Casey Martin (sln*)
12/22/97	14	STIPULATED PROTECTIVE ORDER see formal order Signed 12/22/97 Judge Thomas N. Coffin (counsel notified) (sln*)
12/22/97	15	STIPULATION re: preliminary injunction (sln*)
12/22/97	16	STIPULATED MOTION FOR EXTENSION OF TIME 12/30/97 WITHIN WHICH TO APPEAR (sln*) [Entry date 12/23/97]
12/23/97	17	ORDER by Judge Thomas M. Coffin GRANTING MOTION FOR EXTENSION OF TIME 12/30/97 WITHIN WHICH TO APPEAR [16-1] Signed 12/22/97 (counsel notified) (sln*)

DATE		PROCEEDINGS
12/23/97	18	ORDER by Judge Thomas M. Coffin GRANTING stipulation [15-1] Signed 12/23/97 (counsel notified) (sln*)
12/24/97	19	ANSWER by Defendant PGA Tour Inc to complaint [13-1] (ctw*) [Entry date 12/30/97]
12/24/97	20	MOTION by Defendant PGA Tour Inc FOR SUMMARY JUDGMENT Oral Argument Requested (ctw*) [Entry date 12/30/97]
12/24/97	21	MEMORANDUM IN SUPPORT by Defendant PGA Tour Inc of MOTION FOR SUMMARY JUDGMENT [20-1] (ctw*) [Entry date 12/30/97]
12/24/97	22	CONCISE STATEMENT OF MATERIAL FACTS by Defendant PGA Tour Inc in support of MOTION FOR SUMMARY JUDGMENT [20-1] (ctw*) [Entry date 12/30/97]
12/24/97	23	AFFIDAVIT by Defendant PGA Tour Inc of Edward L. Moorhouse re: MOTION FOR SUMMARY JUDGMENT [20-1] (ctw*) [Entry date 12/30/97]
12/30/97	24	RECORD OF ORDER by Judge Thomas M. Coffin SETTING MOTION FOR SUMMARY JUDGNENT [20-1] on oral argument calendar of 10:00 1/26/98 (counsel notified) (ctw*)
12/31/97	25	AFFIDAVIT by Defendant PGA Tour Inc of Edward L. Moorhouse (ctw*) [Entry date 01/05/98)

DATE		PROCEEDINGS
12/31/97	26	MOTION by Plaintiff Casey Martin TO EXTEND TIME 10 DAYS TO FILE RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT [20-1] Expedited hearing requested (ctw*) [Entry date 01/05/98)
12/31/97	27	MEMORANDUM IN SUPPORT by Plaintiff Casey Martin of MOTION TO EXTEND TIME 10 DAYS TO FILE RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT [20-1] [26-1] (ctw*) [Entry date 01/05/98]
12/31/97	28	AFFIDAVIT by Plaintiff Casey Martin of Martha L. Walters re: MOTION TO EXTEND TIME 10 DAYS TO FILE RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT [20-1] [26-1] (ctw*) [Entry date 01/05/98]
1/5/98	29	RECORD OF ORDER by Judge Thomas M. Coffin SETTING MOTION TO EXTEND TIME 10 DAYS TO FILE RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT [20-1] [26-1] Telephone argument set for 10:00 1/6/98 (counsel notified) (ctw*)
1/5/98	30	RESPONSE by Defendant PGA Tour Inc to MOTION TO EXTEND TIME 10 DAYS TO FILE RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT [20-1] [26-1] (ctw*) [Entry date 01/06/98]

DATE		PROCEEDINGS
1/5/98	31	MOTION by Defendant PGA Tour Inc FOR PROTECTIVE ORDER (ctw*) [Entry date 01/06/98]
1/6/98	32	RECORD OF PROCEEDINGS before Judge Thomas M. Coffin DENYING MOTION TO EXTEND TIME 10 DAYS TO FILE RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT [20-1] [26-1] Plaintiff is allowed until 1/21/98, to file response; defendant allowed until 1/26/98, to file a reply. Motion [20] for summary judgment to remain set 1/26/98. SETTING MOTION FOR PROTECTIVE ORDER [31-1] Telephone argument set for 9:00 1/9/98 pretrial order ddl set for 1/21/98 pretrial conference set for 10:00 1/26/98 3 day jury trial set for 1:30 2/2/98 in Eugene, Pretrial documents due 1/21/98 (counsel notified) Court Rptr Kristi Anderson (ctw*)
1/8/98	33	RECORD OF ORDER by Judge Thomas M. Coffin Pursuant to plaintiff's oral waiver of jury trial, Jury trial stricken 3 day court trial set for 1:30 2/2/98 Eugene (counsel notified) (ctw*)
1/9/98	34	RECORD OF PROCEEDINGS before Judge Thomas M. Coffin GRANTING MOTION FOR PROTECTIVE ORDER [31-1] to the extent that the parties are to identify two board members whose depositions are to be taken telephonically. The depositions are to last no longer than 1 hour each. (counsel notified) Court Rptr Kristi Anderson (ctw*)

DATE		PROCEEDINGS
1/20/98	35	MOTION by Plaintiff Casey Martin TO EXCEED PAGE LIMITATION Expedited ruling requested (ctw*)
1/20/98	36	AFFIDAVIT by Plaintiff Casey Martin of Martha Walters re: MOTION TO EXCEED PAGE LIMITATION [35-1] (ctw*)
1/20/98	37	MOTION by Plaintiff Casey Martin TO EXTEND TIME TO 1/28/98, TO FILE TRIAL MEMORANDUM Expedited ruling requested (ctw*)
1/20/98	38	AFFIDAVIT by Plaintiff Casey Martin of Martha Walters re: MOTION TO EXTEND TIME TO 1/28/98, TO FILE TRIAL MEMORANDUM [37-1] (ctw*)
1/20/98	39	RECORD OF ORDER by Judge Thomas M. Coffin GRANTING MOTION TO EXCEED PAGE LIMITATION [35-1] (counsel notified) (ctw*) [Entry date 01/21/98]
1/21/98	40	RECORD OF ORDER by Judge Thomas M. Coffin GRANTING MOTION TO EXTEND TIME TO 1/28/98, TO FILE TRIAL MEMORANDUM [37-1] (counsel notified) (ctw*)
1/21/98	41	MOTION by Plaintiff Casey Martin TO EXTEND TIME TO FILE PRETRIAL ORDER, WITNESS LIST AND EXHIBIT LIST (ctw*)
1/21/98	42	EXHIBIT LIST by Defendant PGA Tour Inc (ctw*)

DATE		PROCEEDINGS
1/21/98	43	WITNESS LIST by Defendant PGA Tour Inc (ctw*)
1/21/98	44	MOTION by Plaintiff Casey Martin FOR PARTIAL SUMMARY JUDGMENT (ctw*) [Entry date 01/22/98]
1/21/98	45	MEMORANDUM IN SUPPORT by Plaintiff Casey Martin of MOTION FOR PARTIAL SUMMARY JUDGMENT [44-1] (ctw*) [Entry date 01/22/98]
1/21/98	46	CONCISE STATEMENT OF MATERIAL FACTS by Plaintiff Casey Martin in support of MOTION FOR PARTIAL SUMMARY JUDGMENT [44-1] (ctw*) [Entry date 01/22/98]
1/21/98	47	AFFIDAVIT by Plaintiff Casey Martin of Martha Walters re: MOTION FOR PARTIAL SUMMARY JUDGMENT [44-1] (ctw*) [Entry date 01/22/98]
1/21/98	48	AFFIDAVIT by Plaintiff Casey Martin of Casey Martin IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT [20-1] (ctw*) [Entry date 01/22/98]
1/21/98	49	RECORD OF ORDER by Judge Thomas M. Coffin GRANTING MOTION TO EXTEND TIME TO FILE PRETRIAL ORDER, WITNESS LIST AND EXHIBIT LIST [41-1] pretrial order ddl set for 1/22/98 (counsel notified) (ctw*) [Entry date 01/22/98]
1/22/98	50	RECORD OF ORDER by Judge Thomas M. Coffin SETTING MOTION FOR

DATE		PROCEEDINGS
		PARTIAL SUMMARY JUDGMENT [44-1] on oral argument calendar of 10:00 1/26/98 (counsel notified) (ctw*)
1/22/98	51	MOTION TO FILE AMICUS BRIEF US Golf Association Expedited ruling requested c-TC (ctw*)
1/22/98	52	NOTICE of taking deposition by Plaintiff Casey Martin of Steven Nosler on 1/26/98 (ctw*)
1/22/98	53	EXHIBITS TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT [44-1] located in box found at CRD desk. (ctw*)
1/22/98	54	AMENDED MEMORANDUM IN SUPPORT by plaintiff Casey Martin of MOTION FOR PARTIAL SUMMARY JUDGMENT [44-1] ,AND OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT [20-1] (ctw*)
1/22/98	55	EXHIBIT LIST by Plaintiff Casey Martin (ctw*)
1/22/98	56	WITNESS LIST by Plaintiff Casey Martin (ctw*)
1/23/98	—	LODGED PRETRIAL ORDER (ctw*)
1/23/98	57	RECORD OF ORDER by Judge Thomas M. Coffin GRANTING MOTION TO FILE AMICUS BRIEF US Golf Association [51-1] Amicus US Golf Association (counsel notified) (ctw*)

DATE		PROCEEDINGS
1/23/98	58	WITNESS STATEMENT OF DONALD C. JONES, M.D. FILED by Plaintiff Casey Martin (ctw*)
1/23/98	59	WITNESS STATEMENT OF GARY A. KLUG PHD FILED by Plaintiff Casey Martin (ctw*)
1/26/98	60	REPLY TO RESPONSE by Defendant PGA Tour Inc re [44-1] MOTION FOR PARTIAL SUMMARY JUDGMENT, AND RESPONSE TO [20-1] MOTION FOR SUMMARY JUDGMENT (ctw*)
1/26/98	61	CONSENT TO Judge Thomas M. Coffin by Plaintiff, Defendant (ctw*)
1/26/98	62	SUPPLEMENTAL MEMORANDUM ON ISSUE OF EMPLOYMENT STATUS by Plaintiff Casey Martin (ctw*)
1/26/98	63	MEMORANDUM by Amicus US Golf Association Amicus Curiae (ctw*)
1/27/98	64	RECORD OF PROCEEDINGS before Judge Thomas M. Coffin GRANTING IN PART AND DENYING IN PART MOTION FOR PARTIAL SUMMARY JUDGMENT [44-1] Granted on the issue of private club and public accommodation and denied without prejudice as to the remainder of the motion, DENYING MOTION FOR SUMMARY JUDGMENT [20-1] Pre trial conference held in chambers 1/26/98 (counsel notified) Court Rptr Kristi Anderson (ctw*)

DATE		PROCEEDINGS
1/28/98	65	TRIAL MEMORANDUM by Plaintiff Casey Martin (ctw*) [Entry date 01/29/98]
1/29/98	66	TRIAL MEMORANDUM by Defendant PGA Tour Inc (ctw*)
1/29/98	—	AMENDMENT TO JOINT PRETRIAL ORDER (ctw*)
1/29/98	67	AMENDMENT by Defendant PGA Tour Inc to joint Pretrial Order (sln*) [Entry date 01/30/98]
1/30/98	68	PRETRIAL ORDER approved by Judge Thomas M. Coffin Signed 1/30/98 (counsel notified) (sln*)
1/30/98	69	ORDER by Judge Thomas M. Coffin GRANTING IN PART AND DENYING PART MOTION FOR PARTIAL SUMMARY JUDGMENT [44-1], DENYING MOTION FOR SUMMARY JUDGMENT [20-1] Signed 1/30/98 (counsel notified) (ctw*) [Entry date 02/02/98]
2/2/98	70	RESPONSE by Plaintiff Casey Martin to MOTION IN LIMINE (ctw*)
2/2/98	71	AMENDED EXHIBIT LIST by Plaintiff Casey Martin (ctw*)
2/2/98	72	REVISED EXHIBIT LIST by Defendant PGA Tour Inc (ctw*)
2/2/98	73	DEPOSITION DESIGNATIONS by Defendant PGA Tour Inc (ctw*)
2/2/98	74	REVISED DEPOSITION DESIGNATIONS by Defendant PGA Tour Inc (ctw*)

DATE		PROCEEDINGS
2/2/98	75	MOTION by Defendant PGA Tour Inc IN LIMINE (ctw*)
2/2/98	76	SECOND AMENDED EXHIBIT LIST by Plaintiff Casey Martin (ctw*)
2/2/98	77	RECORD OF PROCEEDINGS before Judge Thomas M. Coffin Conference held in chambers. Order DENYING MOTION IN LIMINE [75-1] COURT TRIAL BEGINS 1:30 2/2/98, Ordered trial continued to 2/3/98, at 9:00 a.m. (counsel notified) Court Rptr Kristi Anderson (ctw*) [Entry date 02/03/98]
2/3/98	78	RECORD OF PROCEEDINGS before Judge Thomas M. Coffin COURT TRIAL CONTINUATION - day 2. Trial continued to 2/4/98, at 9:00 (counsel notified) Court Rptr Kristi Anderson/Sharon Gorham (ctw*)
2/4/98	79	RECORD OF PROCEEDINGS before Judge Thomas M. Coffin COURT TRIAL continues. Ordered trial continued to 2/5/98 at 9:00 (counsel notified) Court Rptr Kristi Anderson/Sharon Gorham (ctw*) [Entry date 02/05/98]
2/5/98	80	SUPPLEMENTAL MEMORANDUM ON ISSUE OF EMPLOYEE-EMPLOYER RELATIONSHIP by Plaintiff Casey Martin (ctw*)
2/5/98	81	RECORD OF PROCEEDINGS before Judge Thomas M. Coffin Court trial held (4th day). Ordered trial continued to

DATE		PROCEEDINGS
		2/10/98, at 8:30 a.m. (counsel notified) Court Rptr Kristi Anderson/ Sharon (ctw*)
2/10/98	82	THIRD AMENDED EXHIBIT LIST by Plaintiff Casey Martin (ctw*)
2/10/98	83	RESPONSE by Defendant PGA Tour Inc re plaintiff's supplemental memorandum on issue of employee/employer relationship [80-1] (ctw*)
2/10/98	84	RECORD OF ORDER by Judge Thomas M. Coffin COURT TRIAL CONTINUED TO 2/11/98, AT 8;30 (counsel notified) Court Rptr Kristi Anderson/Sharon Gorham (ctw*)
2/10/98	85	CLERK'S LIST OF EXHIBITS AND WITNESSES (ctw*)
2/11/98	86	ORDER by Judge Thomas M. Coffin The parties are to retain custody of their respective exhibits until such time as all need for the exhibits has terminated (counsel notified) (ctw*)
2/12/98	87	RECORD OF PROCEEDINGS before Judge Thomas M. Coffin COURT TRIAL ENDS Court finds in favor of plaintiff and against defendant. Written opinion to follow. (counsel notified) Court Rptr Kristi Anderson/Sharon Gorham (ctw*)
2/19/98	88	FINDINGS OF FACT and CONCLUSIONS OF LAW: The requested accommodation of a cart is eminently reasonable in light of Casey Martin's disability. (See formal order) by Judge Thomas M. Coffin s/

DATE		PROCEEDINGS
		TMC 2/19/98 (cc: Counsel notified) (ctw*) [Entry date 02/20/98]
2/20/98	89	ERRATA to findings of fact [88-1] (ctw*)
3/3/98	90	TRANSCRIPT of proceedings held 11/28/98 before Judge Thomas M. Coffin court reporter: Amanda Essner (ctw*)
3/4/98	91	JUDGMENT FOR PERMANENT INJUNCTION Judgment is entered in favor of plaintiff Casey Martin, and against defendant PGA, on count 1 of plaintiff's amended complaint alleging that the PGA Tour is a place of public accommodation and that it discriminated against plaintiff in violation of Title III of the ADA by failing to provide him with automotive transportation in competitions in which plaintiff is eligible to participate. Judgment is entered in favor of PGA and against plaintiff on Count 2 of plaintiff's amended complaint, and judgment is also entered in favor of PGA and against plaintiff Martin on count 3 of plaintiff's amended complaint alleging that plaintiff is an employee of the PGA and that the PGA discriminated against plaintiff because of his disability. The court enters a permanent injunction required PGA to provide plaintiff with automotive transportation in Nike Tour and PGA Tour competitions in which plaintiff is eligible. Automotive transportation shall be subject to the terms and conditions agreed upon by the parties. In the event the parties are unable to arrive at an agreement, the court shall retain juris-

DATE		PROCEEDINGS
		diction to resolve any dispute in this regard. Plaintiff may file an application for reasonable cost and attorney fees. There is no just reason for delay and entry of this judgment. SEE FORMAL JUDGMENT Signed 3/4/98 microfilmed 3/11/98 Judge Thomas M. Coffin (counsel notified) (ctw*)
3/17/98	92	AFFIDAVIT by Plaintiff Casey Martin of William Wiswall c-TC (lb)
3/17/98	93	AFFIDAVIT by Plaintiff Casey Martin o James K Walsh c-TC (lb)
3/17/98	94	AFFIDAVIT by Plaintiff Casey Martin of Karen Hendricks (lb)
3/17/98	95	CERTIFICATE OF SERVICE of affidavit [94-1], affidavit [93-1], affidavit [92-1] by Plaintiff Casey Martin (1b)
3/18/98	96	MOTION by Plaintiff Casey Martin FOR ATTORNEY FEES AND COSTS (sln*) [Entry date 03/19/98]
3/18/98	97	MOTION by Plaintiff Casey Martin FOR ATTORNEY FEES AND COSTS and memorandum in support of motion (sln*) [Entry date 03/19/98]
3/18/98	98	AFFIDAVIT by Plaintiff Casey Martin of Martha Lee Walters re: MOTION FOR ATTORNEY FEES AND COSTS [97-1] (sln*) [Entry date 03/19/98]

DATE		PROCEEDINGS
3/18/98	99	AFFIDAVIT by Plaintiff Casey Martin of William G. Wheatley re: MOTION FOR ATTORNEY FEES AND COSTS [97-1] (sln*) [Entry date 03/19/98]
3/18/98	100	COST BILL by Plaintiff Casey Martin [91-3] (sln*) [Entry date 03/19/98]
3/19/98	101	CERTIFICATE OF SERVICE of affidavit [99-1] by Plaintiff Casey Martin (lb) [Entry date 03/23/98]
3/20/98	102	NOTICE OF APPEAL to Court of Appeals by Defendant PGA Tour Inc of judgment and permanent injunction entered 3/4/98 Receipt # 168770 (lb) [Entry date 03/23/98]
3/23/98	—	NOTIFICATION OF APPEAL mailed to Court of Appeals For the Ninth Circuit and to counsel along with copy of appealed document and docket sheet. (lb)
3/30/98	103	NOTIFICATION by US Court of Appeals for the Ninth Circuit of Docket Number 98-35309 by Defendant regarding [102-1] (lb)
3/30/98	104	ORDER for time schedule. appeal [102-1] (Ib)
3/31/98	106	RESPONSE by Defendant PGA Tour Inc to [97-1] MOTION FOR ATTORNEY FEES AND COSTS, [96-1] MOTION FOR ATTORNEY FEES AND COSTS with request for oral argument (lb) [Entry date 04/02/98]
4/1/98	105	RECORD OF ORDER by Judge Thomas M. Coffin SETTING MOTION FOR ATTORNEY FEES AND COSTS [97-1] on

DATE		PROCEEDINGS
		oral argument calendar of 10:30 4/20/98, SETTING MOTION FOR ATTORNEY FEES AND COSTS [96-1] on oral argument calendar of 10:30 4/20/98 (counsel notified) (1b)
4/6/98	107	TRANSCRIPT DESIGNATION AND ORDERING FORM for date(s) 1/26/98; 2/2/98 appeal [102-1] (lb)
4/6/98	108	RECORD OF ORDER by Judge Thomas M. Coffin SETTING BILL OF COSTS MOTION [100-1] on oral argument calendar of 10:30 4/20/98 (counsel notified) (1b) [Entry date 04/07/98]
4/6/98	116	MOTION OF APPEAL to Court of Appeals by Plaintiff Casey Martin decision judgment [91-3] Receipt # 168833 (lb) [Entry date 04/09/98]
4/6/98	117	REPRESENTATION STATEMENT as to Casey Martin Attorneys Martha L Walters and William Wiswall represent plaintiff-appellee-cross appellant Attorneys William J Maledon Andrew D Hurwitz Scott W Rodgers and Thomas L Hudson represent defendant-appellant-cross-appellee (lb) [Entry date 04/09/98]
4/8/98	109	TRANSCRIPT of proceedings held 1/26/98 before Judge Thomas M. Coffin appeal [102-1] court reporter: Kristi Anderson (1b)

DATE		PROCEEDINGS
4/8/98	110	TRANSCRIPT of proceedings held 2/2/98 Vol 1 before Judge Thomas M. Coffin appeal [102-1] court reporter: Kristi Anderson (lb)
4/8/98	111	TRANSCRIPT of proceedings held 2/3/98 Vol 11 before Judge Thomas M. Coffin appeal [102-1] court reporter: Kristi Anderson/Sharon Gorham (1b)
4/8/98	112	TRANSCRIPT of proceedings held 2/4/98 Vol 3 before Judge Thomas M. Coffin appeal [102-1] court reporter: Kristi Anderson/Sharon Gorham (1b)
4/8/98	113	TRANSCRIPT of proceedings held 2/5/98 Vol 4 before Judge Thomas M. Coffin appeal [102-1] court reporter: Kristi Anderson/Sharon Gorham (lb)
4/8/98	114	TRANSCRIPT of proceedings held 2/10/98 Vol 5 before Judge Thomas M. Coffin appeal [102-1] court reporter: Kristi Anderson/Sharon Gorham (lb)
4/8/98	115	TRANSCRIPT of proceedings held 2/11/98 Vol 6 before Judge Thomas M. Coffin appeal [102-1] court reporter: Kristi Anderson/Sharon Gorham (lb)
4/9/98	—	NOTIFICATION OF APPEAL mailed to Court of Appeals For the Ninth Circuit and to counsel along with copy of appealed document and docket sheet. (lb)

DATE		PROCEEDINGS
4/14/98	118	MOTION by Plaintiff Casey Martin TO COMPEL PRODUCTION OF DOCUMENTS Oral Argument c-TC Requested (lb) [Entry date 04/16/98]
4/14/98	119	REPLY TO RESPONSE by Plaintiff Casey Martin re [97-1] MOTION FOR ATTORNEY FEES AND COSTS, [96-1] MOTION FOR ATTORNEY FEES AND COSTS (lb) [Entry date 04/16/98]
4/14/98	120	AFFIDAVIT by Plaintiff Casey Martin of Martha L Walters re: MOTION reply [119-1] (lb) [Entry date 04/16/98]
4/15/98	121	RECORD OF ORDER by Judge Thomas M. Coffin SETTING MOTION TO COMPEL PRODUCTION OF DOCUMENTS [118-1] Telephone argument set for 9:00 4/16/98 (counsel notified) (lb) [Entry date 04/16/98]
4/16/98	122	RECORD OF PROCEEDINGS before Judge Thomas M. Coffin GRANTING IN PART AND DENYING IN PART MOTION TO COMPEL PRODUCTION OF DOCUMENTS [118-1] (counsel notified) (lb) [Entry date 04/17/98]
4/17/98	123	AFFIDAVIT by Plaintiff Casey Martin of William Wiswall re: MOTION FOR ATTORNEY FEES AND COSTS [97-1] (lb)
4/17/98	124	RESPONSE by Plaintiff Casey Martin to [96-1] MOTION FOR ATTORNEY FEES AND COSTS (lb)

DATE		PROCEEDINGS
4/17/98	125	CERTIFICATE OF SERVICE of response [124-1] , affidavit [123-1] by Plaintiff Casey Martin (lb)
4/17/98	126	REPLY by Defendant PGA Tour Inc to plaintiff's motion to compel documents (lb) [Entry date 04/21/98]
4/20/98	127	RECORD OF PROCEEDINGS before Judge Thomas M. Coffin TAKING UNDER ADVISEMENT on 4/20/98 cost MOTION [100-1], TAKING UNDER ADVISEMENT on 4/20/98 MOTION FOR ATTORNEY FEES AND COSTS [97-1], TAKING UNDER ADVISEMENT on 4/20/98 MOTION FOR ATTORNEY FEES AND COSTS [96-1] (counsel notified) Court Rptr Kristi Anderson (lb) [Entry date 04/21/98]
4/20/98	128	SUPPLEMENTAL AFFIDAVIT by Plaintiff Casey Martin of Martha Lee Walters re: MOTION FOR ATTORNEY FEES AND COSTS , [97-1], MOTION FOR ATTORNEY FEES AND COSTS [96-1] (1b) [Entry date 04/21/98]
4/21/98	129	NOTIFICATION by US Court of Appeals for the Ninth Circuit of Docket Number 98-35367 by Plaintiff regarding [116-1] (lb)
4/21/98	130	ORDER for time schedule. appeal [116-1] (lb)
4/23/98	131	ORDER by Judge Thomas M. Coffin GRANTING cost MOTION [100-1] in the amount of $16,881.93, GRANTING MOTION FOR ATTORNEY FEES AND

DATE		PROCEEDINGS
		COSTS [97-1], GRANTING MOTION FOR ATTORNEY FEES AND COSTS [96-1] in the amount of $105,020 for Wiswall's firm; $105,016.50 for Walter's firm. Signed 4/23/98 (counsel notified) (ctw*) [Entry date 04/24/98]
5/13/98	132	MOTION by Defendant PGA Tour Inc TO STAY EXECUTION OF ATTORNEY'S FEE AWARD Oral Argument Requested (lb) [Entry date 05/19/98]
5/13/98	133	NOTICE OF APPEAL to Court of Appeals by Defendant PGA Tour Inc 4/24/98 order awarding attorney fees Receipt # 900141 (lb) [Entry date 05/19/98]
5/19/98	—	NOTIFICATION OF APPEAL mailed to Court of Appeals For the Ninth Circuit and to counsel along with copy of appealed document and docket sheet. (lb)
5/21/98	134	RECORD OF ORDER by Judge Thomas M. Coffin SETTING MOTION TO STAY EXECUTION OF ATTORNEY'S FEE AWARD [132-1] on oral argument calendar of 10:00 6/3/98 (counsel notified) (1b) [Entry date 05/22/98]
5/26/98	135	REPLY by Plaintiff Casey Martin re MOTION TO STAY EXECUTION OF ATTORNEY'S FEE AWARD [132-1] (lb) [Entry date 05/27/98]
5/26/98	136	AFFIDAVIT by Plaintiff Casey Martin of Martha Lee Walters re: reply [135-1] (lb) [Entry date 05/27/98]

DATE		PROCEEDINGS
5/26/98	137	NOTIFICATION by US Court of Appeals for the Ninth Circuit of Docket Number 98-35509 by Defendant regarding [133-1] (lb) [Entry date 05/28/98]
5/26/98	138	ORDER for time schedule appeal [133-1] (lb) [Entry date 05/28/98]
5/27/98	139	NOTICE OF CROSS APPEAL to Court of Appeals by Plaintiff Casey Martin of notice of appeal filed 5/13/98 (#132) Receipt # 900179 (lb) [Entry date 05/28/98]
5/28/98	140	RECORD OF ORDER by Judge Thomas M. Coffin SETTING MOTION TO STAY EXECUTION OF ATTORNEY'S FEE AWARD [132-1] on oral argument calendar of 10:30 6/3/98 (counsel notified) (lb)
6/1/98	141	REPLY TO RESPONSE by Defendant PGA Tour Inc re MOTION TO STAY EXECUTION OF ATTORNEY'S FEE AWARD [132-1] (lb) [Entry date 06/02/98]
6/2/98	142	SUPPLEMENTAL REPLY by Plaintiff Casey Martin re MOTION TO STAY EXECUTION OF ATTORNEY'S FEE AWARD [132-1] (lb)
6/3/98	143	SUPPLEMENTAL AFFIDAVIT by Plaintiff Casey Martin of William Wiswall re: MOTION TO STAY EXECUTION OF ATTORNEY'S FEE AWARD [132-1] (1b)
6/3/98	144	RECORD OF PROCEEDINGS before Judge Thomas M. Coffin TAKING UNDER ADVISEMENT on 6/3/98 MOTION TO STAY EXECUTION OF ATTORNEY'S

DATE		PROCEEDINGS
		FEE AWARD [132-1] (counsel notified) Court Rptr Amanda Essner (lb)
6/4/98	145	SUBSTITUTION of Attorney Susan E Watts replacing attorney Garr M King for US Golf Association (lb)
6/8/98	146	NOTIFICATION by US Court of Appeals for the Ninth Circuit of Docket Number 98-35547 by Plaintiff regarding [139-1] (lb)
6/8/98	147	ORDER for time schedule. appeal [139-1] (lb)
6/15/98	148	ORDER by Judge Thomas M. Coffin GRANTING MOTION TO STAY EXECUTION OF ATTORNEY'S FEE AWARD [132-1] The stay shall take effect upon the posting of the supersedeas bond Signed 6/15/98 (counsel notified) (lb)
6/17/98	149	TRANSCRIPT DESIGNATION AND ORDERING FORM for date(s) 4/2/09 appeal [133-1] (lb) [Entry date 06/18/98]
6/18/98	150	TRANSCRIPT of proceedings held 4/20/98 before Judge Thomas M. Coffin appeal [133-1] court reporter; Kristi Anderson (lb) [Entry date 06/19/98]
6/22/98	151	BOND supersedeas undertaking filed by defendant re: PGA Tour Inc () (lb)
6/25/98	152	MANDATE/JUDGMENT from USCA re: Appeal #98-35367 [116-1] ; Pursuant to the court's 6/3/98, order, this appeal is deemed DISMISSED VOLUNTARILY. Dismissal is without prejudice to plaintiff's pursuing

DATE		PROCEEDINGS
		alternative grounds for affirmance in his brief in defendant's appeal. (lb) [Entry date 06/26/98]
8/14/98	153	CERTIFICATE OF RECORD transmitted to US Court of Appeals for the Ninth Circuit [139-1] (lb)
8/14/98	154	CERTIFICATE OF RECORD transmitted to US Court of Appeals for the Ninth Circuit [133-1] (lb)
10/20/98	155	CERTIFIED COPY OF ORDER from the US Court of Appeals for the Ninth Circuit [133-1], [116-1] , [102-1] (lb)
10/26/98	156	CERTIFIED COPY OF ORDER from the US Court of Appeals for the Ninth Circuit as to 98-35509 (#133) and 98-35547 (#139) Remainder of briefing schedule is vacated Defendant's optional reply brief in appeal 98-35509 (#133) is due 14 days from date of this order (lb)
11/2/98	157	MANDATE/JUDGMENT from USCA VOLUNTARILY DISMISSING the appeal [139-1] (lb)
3/30/00	158	MANDATE/JUDGMENT from USCA AFFIRMING the decision of the District Court [133-1] , AFFIRMING the decision of the District Court [102-1] (lb) [Entry date 03/31/00]

UNITED STATES COURT OF APPEALS,
NINTH CIRCUIT.

Nos. 98-35309, 98-35509.

CASEY MARTIN,
Plaintiff-Appellee,
v.
PGA TOUR INC., a Maryland corporation,
Defendant-Appellant.

Argued and Submitted May 4, 1999.
Decided March 6, 2000

Before: CANBY and T.G. NELSON, *Circuit Judges*, and FOGEL,[1] *District Judge*.

CANBY, *Circuit Judge*:

PGA Tour, Inc. ("PGA") appeals from the district court's decision in favor of Casey Martin, a disabled professional golfer, ordering PGA to make an exception to its "walking rule" to allow Martin to ride a golf cart during PGA competitions. We conclude that the Americans with Disabilities Act ("ADA") applies to PGA competitions and that allowing Martin to use a cart is a reasonable accommodation that does not fundamentally alter the nature of those events. We therefore affirm the district court's decision.

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[1] The Honorable Jeremy Fogel, United States District Judge for the Northern District of California, sitting by designation.

BACKGROUND

Casey Martin suffers from Klippel-Trenaunay-Weber Syndrome, a congenital, degenerative circulatory disorder that is manifested in a malformation of his right leg. This disorder causes Martin severe pain and atrophy in his lower leg, rendering him unable to walk for extended periods of time. The mere act of walking subjects him to a significant risk of fracture or hemorrhaging. There is no dispute that Martin is profoundly disabled.

PGA is a non-profit association of professional golfers.[2] It sponsors three competitive tours: (1) the PGA Tour, its most competitive tour, (2) the Nike Tour, one step down from the PGA Tour, and (3) the Senior PGA Tour, restricted to professional golfers age 50 and over. On days of tour competition, PGA is the operator of the golf course.[3]

The primary means of gaining entry to the PGA Tour and Nike Tour is by a competition known as the qualifying school. The best scorers in that competition qualify for the PGA Tour, and the next-best finishers qualify for the Nike Tour. Players in the Nike Tour may qualify for the PGA Tour by winning three Nike Tour tournaments in one year or by being in the top fifteen money- winners in the Nike Tour.

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[2] We refer hereafter to the defendant PGA Tour, Inc. as "PGA," in order to differentiate it from the PGA Tour, which is one of the three tours sponsored by PGA Tour, Inc.

[3] The term "operates," as it is used in the ADA, is extensive and "would include sublessees, management companies, and any other entity that owns, leases, leases to, or operates a place of public accommodation, even if the operation is only for a short time." 28 C.F.R. ch. I, pt. 36, app. B., at 628 (1999).

The qualifying school competition is conducted in three stages. In the first two stages, players are permitted to use golf carts. In the third stage, and in the PGA and Nike Tours themselves, players are required to walk as they play the course.[4] After qualifying for the third and final stage of the 1997 qualifying school, Martin requested permission from PGA to use a golf cart. PGA denied this request, and Martin sued.

The district court granted Martin a preliminary injunction and, using a golf cart, he performed well enough in the final stage of the qualifying school to earn a spot on the 1998 Nike Tour. The court subsequently granted Martin partial summary judgment, holding that PGA is subject to Title III of the ADA because it owns, operates and leases golf courses, which the ADA identifies as places of public accommodation.[5] *Martin v. PGA Tour, Inc.*, 984 F.Supp. 1320 (D.Or.1998). After a six-day bench trial, the district court concluded that modifying the walking rule for Martin was a reasonable accommodation that did not fundamentally alter the nature of PGA golf tournaments. *Martin v. PGA Tour, Inc.*, 994 F.Supp. 1242 (D.Or.1998). It accordingly entered a permanent injunction requiring PGA to permit Martin to use a golf cart in PGA and Nike Tour competitions in which he is eligible to participate, and in any qualifying rounds for those tours. PGA appeals.[6]

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[4] Players are permitted to use golf carts on the Senior Tour.

[5] The district court also ruled that PGA is not exempt from the ADA as a "private club," *see* 42 U.S.C. § 12187, because, among other reasons, it is a commercial enterprise offering athletic events to the public. *Martin*, 984 F.Supp. at 1326. PGA has not challenged that ruling on this appeal.

[6] The district court awarded Martin attorneys' fees and costs. PGA has protectively appealed that order; it does not contest the amount but seeks reversal of the award if it succeeds on appeal. Because we affirm on the merits, we also affirm the award of fees and costs to Martin as the prevailing party.

DISCUSSION

I. *Applicability of Title III (Public Accommodation)*

The district court granted Martin's motion for summary judgment, holding that, as a matter of law, Title III of the ADA applies to the PGA and Nike Tour competitions. We review de novo the district court's interpretation of the ADA. *Nunes v. Wal-Mart Stores, Inc.*, 164 F.3d 1243, 1246 (9th Cir.1999).

We begin our analysis, as did the district court, with the terms of the statute. The basic anti-discrimination clause of Title III of the ADA provides:

> No individual shall be discriminated against on the basis of disability in the full enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

42 U.S.C. § 12182(a). The first issue for decision is whether Martin seeks to enjoy the facilities of a "place of public accommodation." The definition section of Title III of the ADA provides:

> The following private entities are considered public accommodations for purposes of this subchapter . . .
>
> * * * * *
>
> (L) a gymnasium, health spa, bowling alley, *golf course*, or other place of exercise or recreation.

42 U.S.C. § 12181(7)(L) (emphasis added). There is nothing ambiguous about this provision; golf courses are public accommodations. Indeed, PGA does not dispute that during one of its tournaments a golf course is a public accommodation with regard to the spectator areas; its contention is that the competitors' area "behind the ropes" is not a public accommodation because the public has no right

to enter it. Despite the surface plausibility of this argument, it too narrowly construes the nature of a public accommodation.

The district court held that a public accommodation could not be compartmentalized in the fashion PGA desired. At least in the present context, we agree. It is true that the general public cannot enter the area "inside the ropes," but competitors, caddies, and certain other personnel can. PGA contends that the restricted area is not being used as a "place of exercise or recreation," within the meaning of § 12181(7)(L), because the competitors are trying to win money, not exercise or recreate. Even if we were to agree with this point, it would not aid PGA. The statute also defines "public accommodation" to include a "theater, . . . stadium or other place of exhibition or entertainment." 42 U.S.C. § 12181(7)(C). If a golf course during a tournament is not a place of exercise or recreation, then it is a place of exhibition or entertainment. The statute does not restrict this definition to those portions of the place of exhibition that are open to the general public. The fact that entry to a part of a public accommodation may be limited does not deprive the facility of its character as a public accommodation. *See Independent Living Resources v. Oregon Arena Corp.*, 982 F.Supp. 698, 759 (D.Or.1997) (arena's executive suites contracted by businesses are public accommodations). Indeed, the underlying premise of the cases dealing with disabled student athletes is that Title III applies to the playing field, not just the stands. *See, e.g., Bowers v. National Collegiate Athletic Ass'n*, 9 F.Supp.2d 460, 483-90 (D.N.J.1998); *Tatum v. National Collegiate Athletic Ass'n*, 992 F.Supp. 1114, 1121 (E.D.Mo.1998); *Ganden v. National Collegiate Athletic Ass'n*, 1996 WL 680000, at *8-11 (N.D.Ill. Nov.21, 1996); *see also Anderson v. Little League Baseball, Inc.*, 794 F.Supp. 342, 344 (D.Ariz.1992) (undisputed that Title III applies to access to coaches' box on baseball field).

The Third Circuit dealt with a somewhat analogous problem in *Menkowitz v. Pottstown Memorial Medical Center*, 154 F.3d 113 (3d Cir.1998). There a physician with a disability sued a hospital under Title III after it denied him hospital staff privileges. The Third Circuit rejected the argument that Title III could be invoked only by the patients of a hospital, and held that denial of staff privileges qualified as a denial of "full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation" prohibited by Title III, § 12182(a). *Id.* at 122. Staff privileges, of course, entail access to parts of the facility to which patients and the general public are denied entry.

In contending that it may compartmentalize golf courses during tournaments, PGA leans heavily on two examples set forth in the regulations. One is of a "mixed use facility," in the form of a large hotel that has a separate residential wing. *See* 28 C.F.R. ch. I, pt. 36, app. B, at 623 (1999). The non-public residential wing (which would be covered by the Fair Housing Act) is not a place of "public accommodation." *See id.* The hotel wing, however, would fall under 42 U.S.C. § 12181(7)(A) as an "inn, hotel, motel, or other place of lodging." 28 C.F.R. ch I, pt. 36, app. B, at 623; *see* 42 U.S.C. § 12181(7)(A). But in this example, the residential wing has never functioned as a hotel. A golf course during a tournament, however, is serving as a golf course.

The other example cited by PGA is that of a commercial facility, such as a factory, that allows public tours over specific routes at particular times. *See* 28 C.F.R. ch. I, pt. 36, app. B, at 624. The tour route is a public accommodation but the portions of the facility merely viewed from that route are not. *See id.* There are two reasons why this example is not persuasive. First, it applies to commercial facilities "not otherwise a place of public accommodation." *Id.* Second, the example would be analogous only if Martin were a spectator

seeking to use his golf cart within the competitors' area of a tournament.

This point brings us to the greatest difficulty with PGA's argument. It assumes that there is nothing public about the competition itself. According to PGA, the fact that its tournaments are restricted to the nation's best golfers means that the courses on which they play during tournaments cannot be places of public accommodation. But the fact that users of a facility are highly selected does not mean that the facility cannot be a public accommodation. For example, Title III includes in its definition "secondary, undergraduate, or postgraduate private school[s]." 42 U.S.C. § 12181(7)(J). The competition to enter the most elite private universities is intense, and a relatively select few are admitted. That fact clearly does not remove the universities from the statute's definition as places of public accommodation. It is true that the rest of the public is then excluded from the schools, but the students who are admitted are nevertheless members of the public using the universities as places of public accommodation.[7]

Competition to enter the select circle of PGA and Nike Tour golfers is comparable. Any member of the public who pays a $3000 entry fee and supplies two letters of recommendation may try out in the qualifying school. At the initial stage, it seems plain that the golf course on which the elimination begins is a place of public accommodation. As even PGA admits, "[t]he competition areas of some amateur

[7] Title III does not restrict its coverage to members of the public; it provides that "No individual shall be discriminated against" in the enjoyment of public accommodations by reason of disability. 42 U.S.C. § 12182(a) (emphasis added). This provision does not, however, grant access to a place where the individual is not entitled to be; the rejected applicant for admission is not entitled to access to the university, and the spectator is not entitled to access to the tees, fairways and greens during a PGA golf tournament.

sporting events may well constitute places of public accommodation under Title III of the ADA when virtually any member of the public can participate." We fail to see, however, why a winnowing process would change the nature of the facility. If a stadium owner invited the public to compete in long distance races, and continued to run heats until only the ten best runners remained, the track would be no less a place of public accommodation when the final race was run. We see no justification in reason or in the statute to draw a line beyond which the performance of athletes becomes so excellent that a competition restricted to their level deprives its situs of the character of a public accommodation. Nor do we see any such justification for drawing a line between use of a place of public accommodation for pleasure and use in the pursuit of a living.

We conclude, therefore, that golf courses remain places of public accommodations while a PGA tournament is being conducted on them.

II. *Reasonable Modification (Accommodation)*

Title III further defines "discrimination" to include:

> a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications *would fundamentally alter the nature* of such goods, services, facilities, privileges, advantages or accommodations.

42 U.S.C. § 12182(b)(2)(A)(ii) (emphasis added).

Here, it is clear that permitting Martin to use a golf-cart is "reasonable" in the sense that it solves the problem of Martin's access to the competition. It is also "reasonable," as the district court found, in that golf-carts are used in other

competitions (such as those on the Senior Tour), and it is not a difficult practical matter to permit them. Use of a golf cart is also "necessary"; there was ample evidence to support the district court's finding that Martin could not walk the course, even with artificial aids. These matters are no longer in serious contention.

The issue on which most of the dispute centers is whether permitting Martin to use a golf cart will "fundamentally alter" the nature of the goods or service—the PGA or Nike Tour. It is readily apparent that walking is not essential to the generalized game of golf. Rule 1-1 of the Rules of Golf, promulgated by the United States Golf Association and the Royal and Ancient Golf Club of St. Andrews, Scotland, states:

> The Game of Golf consists in playing a ball from the teeing ground into the hole by a stroke or successive strokes in accordance with the Rules.

These Rules do not require players to walk. Indeed, PGA does not require players to walk in the early stages of the qualifying school or in the Senior Tour.

PGA correctly points out, however, that it is not offering the generalized game of golf in its PGA and Nike Tours, it is offering a particular competition. PGA provides, in the Conditions of Competition for its PGA and Nike Tours, that "[p]layers shall walk at all times during a stipulated round unless permitted to ride by the PGA TOUR Rules Committee." On occasions when the Committee has permitted players to ride, the waiver applies to all competitors, as when all players must be shuttled from the 9th green to the 10th tee when the distance is great. It also appears that, to save time, rides have been given from the fairway back to the tee to players who have lost a ball and must tee off again.

The issue for decision, then, is whether the accommodation of permitting Martin to use a golf cart fundamentally alters the PGA and Nike Tour competitions. That issue was fully tried in the district court.

The district court found that the purpose of requiring players to walk was to inject a fatigue factor into the shot-making of the game. *Martin*, 994 F.Supp. at 1250. It also found, however, that "the fatigue factor injected into the game of golf by walking the course cannot be deemed significant under normal circumstances." *Id.* It further found that, at the low levels of intensity of exercise involved in untimed walking of a golf course during a competition, "fatigue . . . is primarily a psychological phenomenon. . . . Stress and motivation are the key ingredients here." *Id.* at 1251. The court noted that, given the choice of carts or walking in other tours, large numbers of players chose to walk. *See id.* In the events in which PGA permits carts, it assigns no handicap penalty to those who ride as opposed to those who walk. *See id.* at 1248.

There was ample evidence to support all of these findings, and they are not clearly erroneous. Against this background, the district court evaluated whether use of a cart would give Martin an advantage over the other players who were required to walk. Even with a cart, Martin must walk about twenty-five percent of the course because the cart cannot be brought near to the ball in many cases. Martin endures significant pain while walking, and while getting in and out of his cart. The district court, after considering these factors, found that Martin "easily endures greater fatigue even with a cart than his able-bodied competitors do by walking." *Id.* at 1252.

In light of these findings, we conclude, as did the district court, that permitting Martin to use a golf court in PGA and Nike Tour competitions would not fundamentally alter the nature of those competitions. The central competition in

shot-making would be unaffected by Martin's accommodation. All that the cart does is permit Martin access to a type of competition in which he otherwise could not engage because of his disability.[8] That is precisely the purpose of the ADA. *See* 42 U.S.C. § 12101(a)(5) (discrimination against disabled includes "failure to make modifications to existing facilities and practices"); *Crowder v. Kitagawa*, 81 F.3d 1480, 1483 (9th Cir.1996) (Congress intended ADA to cover discriminatory impact of facially neutral barriers).

PGA argues that the kind of balancing engaged in by the district court and now by this court is wholly illegitimate. It agrees that some athletic rules, such as dress codes or uniform requirements, may be subject to exceptions to accommodate the disabled. But it contends that a rule intended to affect the competition cannot be made subject to exception. According to PGA, the case should have ended in its favor the moment the district court concluded that the purpose of PGA's walking-only rule was to inject the fatigue factor into the competition. Once that rule is determined to be "substantive," according to PGA, it is not subject to exceptions to accommodate disability.

The difficulty with this position is that it reads the word "fundamentally" out of the statutory language, which requires reasonable accommodation unless PGA can demonstrate that the accommodation would "fundamentally alter the nature" of its competition. 42 U.S.C. § 12182(b)(2)(A)(ii). PGA essentially argues that permitting a player to ride alters the competition and inquiry must stop there. It makes all alterations of the competition fundamental. But the statute

[8] We note that the NCAA and Pac-10 rules of competition require players to walk and carry their own clubs. Martin applied for, and was granted, a waiver of that rule that permitted him to compete in college tournaments when he was a student.

mandates an inquiry into whether a particular exception to a rule would "fundamentally alter" the nature of the good or service being offered. The issue here is not whether use of carts generally would fundamentally alter the competition, but whether the use of a cart by Martin would do so. The evidence must "focus [ ] on the specifics of the plaintiff's or defendant's circumstances and not on the general nature of the accommodation." *Johnson v. Gambrinus Co./Spoetzl Brewery*, 116 F.3d 1052, 1060 (5th Cir.1997). We cannot tell whether a golf cart for Martin fundamentally alters the competition without first investigating whether walking is fundamental to the competition. The mere fact that PGA has defined walking to be part of the competition cannot preclude inquiry, or PGA will have been able to define itself out of reach of the ADA. The district court, as we have said, found that the fatigue factor injected into the game by walking was not significant, and that finding was not clearly erroneous.

The nature of the district court's findings reflect the fact that whether an accommodation fundamentally alters a competition is an intensively fact-based inquiry. For that reason, we reject PGA's argument that permitting Martin to use a golf cart would open the door to future decisions requiring that disabled swimmers or runners be given a head start in a race, or that a growth-impaired basketball player be allowed to shoot 3-point baskets from inside the three-point line. We have little doubt that fact-based inquiries into the effects of such accommodations would result in rulings that those accommodations fundamentally altered the competitions. The same would be true if Martin were seeking to use a special golf ball that carried farther than others, or was seeking to play a shorter course than his competitors. Martin, however, seeks only to use a cart between shots, and the district court, after considering the evidence presented in a full trial, found that this accommodation does not fundamentally alter the competition.

PGA next contends that it was wholly improper for the district court to consider whether Martin's condition was such that riding would not give him an unfair advantage over competitors who walked. PGA has steadfastly declined to consider Martin's condition in adhering to its position that permitting him to use a cart would fundamentally change its competition. It contends that it would be far too burdensome for PGA to determine whether disabled individuals using carts would have an advantage over non-disabled walking competitors. PGA relies on *Sandison v. Michigan High Sch. Athletic Ass'n*, 64 F.3d 1026 (6th Cir.1995), which upheld an upper-age limit for high school athletes. *Sandison* rejected an argument that over-age would not provide a competitive advantage for the learning-disabled plaintiffs because they were of only average athletic ability; it stated that "[i]t is plainly an undue burden to require high school coaches and hired physicians to determine whether [various] factors render a student's age an unfair competitive advantage." *Id.* at 1035; *see also McPherson v. Michigan High Sch. Athletic Ass'n*, 119 F.3d 453, 462 (6th Cir.1997) (upholding maximum eight-semester eligibility rule on same grounds); *Pottgen v. Missouri State High Sch. Activities Ass'n*, 40 F.3d 926, 931 (8th Cir.1994) (same).

The foundation of these cases, however, was a finding, or evidence compelling a finding, that the rule against older or more experienced high- school athletes was necessary to protect the competition in the lower age group, and to prevent "red-shirting" of athletes to permit them to compete when older and more experienced than the others. *See Sandison*, 64 F.3d at 1035; *McPherson*, 119 F.3d at 462; *Pottgen*, 40 F.3d at 931 & n. 6. The record in this case is quite different; the district court found that the fatigue factor introduced by walking was not significant.[9]

[9] This finding also distinguishes Martin's case from *Olinger v. United States Golf Ass'n*, 55 F.Supp.2d 926 (N.D.Ind.1999), in which the district court found on the evidence there presented that use of a cart can provide a golfer with a competitive advantage over a golfer who walks. *See id.* at 935. To the extent that other rulings in *Olinger* are inconsistent with our decision today, we respectfully disagree with it.

Moreover, we do not share the antagonism to individual determinations reflected in these cases. "We prefer the approach of Judge Richard Arnold, dissenting in *Pottgen*, that the inquiry must focus on the individual exception and that, in light of the plaintiff's individual characteristics as found by the district court, the age requirement could be modified for this individual player without doing violence to the admittedly salutary purposes underlying the age rule." *Pottgen*, 40 F.3d at 932 (dissenting opinion). The Seventh Circuit adopted such an approach in *Washington v. Indiana High Sch. Athletic Ass'n*, 181 F.3d 840 (7th Cir.), *cert. denied*, — U.S. —, 120 S.Ct. 579, 145 L.Ed.2d 482 (1999), in enjoining enforcement of an eight- semester rule against a learning-disabled student. It observed that applying the eight-semester rule to exclude the particular plaintiff would not "add anything to the protections provided by the IHSAA's age limit rule, which generally limits the size, strength and athletic maturity of student athletes." *Id.* at 852. The court continued:

> Nor will the record support the argument that a waiver of the rule in Mr. Washington's case would place an undue administrative or financial burden on the IHSAA. The record indicates that Mr. Washington is the only student athlete to seek a waiver because of a learning disability in more than a decade. The few case-by-case analyses that the IHSAA would need to conduct hardly can be described as an excessive burden.

Id. Much the same can be said here. Nothing in the record establishes that an individualized determination would impose an intolerable burden on PGA. Although PGA refused

to consider the effect of Martin's disability, the district court appeared to have little difficulty making the factual determination that providing Martin with a golf cart would not give him an unfair advantage over his competitors. We conclude that, under the ADA, that determination was a proper one for the court to make. *See Johnson*, 116 F.3d at 1059-60 (fundamental alteration defense focuses on individual circumstances).

CONCLUSION

We conclude that, under Title III of the ADA, a golf course is a place of public accommodation while PGA is conducting a tournament there. We also conclude that the district court did not err in determining that the provision of a golf cart to Martin was a reasonable accommodation to his disability, and that use of the cart by Martin did not fundamentally alter the nature of the PGA and Nike Tour tournaments. We accordingly affirm the judgment of the district court.[10]

AFFIRMED.

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[10] Our ruling that Martin is entitled to relief under § 12182(a) of Title III makes it unnecessary to address his alternative arguments.

UNITED STATES DISTRICT COURT,
D. OREGON.

No. 97-6309-TC.

CASEY MARTIN,
Plaintiff,

v.

PGA TOUR, INC., a Maryland Corporation,
Defendant.

Feb. 19, 1998

FINDINGS OF FACT AND CONCLUSIONS OF LAW

COFFIN, United States Magistrate Judge.

This case presents profound questions regarding the application of the Americans with Disabilities Act (ADA). Does the ADA apply to athletic events or sports organizations? If so, are the most elite events and organizations, such as those at the professional level, somehow exempt from coverage? If the ADA is applicable, may a rule of competition be modified to accommodate a disabled competitor, or are the rules untouchable because any alteration of any rule would fundamentally alter the nature of the competitions?

Casey Martin is a disabled professional golfer. He can do everything well in the game of golf except walk to and from his shots. Because of a congenital deformity, his right leg is severely atrophied and weakened. He is placed at significant risk of fracturing his tibia by the simple act of walking, because of the increasing loss of bone stock and weakening of this bone that has occurred over the lifetime of this disorder. According to the medical testimony, walking also places

Martin at significant risk of hemorrhaging as well, and creates an increased chance of developing deep venous thrombosis (blood clots).

The condition plaintiff suffers from causes him severe pain and discomfort. The slightest touching of his right leg at or below the knee is extremely painful. Beyond this, the condition causes him pain while playing golf, pain while carrying on daily activities and pain even while he is at rest.

A video of plaintiff's condition introduced into evidence at the trial, provides compelling evidence of the nature and extent of his disability[11]: The right leg appears to be about half the size of plaintiff's left leg. When plaintiff removes his double set of support stockings and stands upright, the leg immediately discolors and swells in size because the circulatory condition with which he is afflicted prevents the blood from flowing through his veins back to the heart. Instead, gravity, combined with "incompetent" valves which fail to close properly, pulls the blood back down his leg. The leg becomes engorged in blood because the arteries pump blood to his leg but the veins fail to circulate blood back to the heart. To relieve this situation, plaintiff must lie down and elevate the leg.

A double set of support or compression stockings provides plaintiff with enough venous pressure to allow him to remain

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[11] Defendant PGA Tour objected to the introduction of the video on grounds of relevance and hearsay. The objection as to relevance was based on the PGA's position that it conceded Martin has a disability and this evidence on that issue was unnecessary. However, as I will explain more fully *infra*, I disagree with the PGA's contention that an individualized assessment of Casey Martin's disability is irrelevant to the outcome of this case. Consideration of the nature and extent of plaintiff's disability is critical to determining whether use of a cart affords him a reasonable accommodation under the circumstances presented. The hearsay objection concerned certain audio portions of the tape, which portions were stricken from the record.

upright for periods of time. As he has gotten older (he is now 25 years of age), his leg has steadily worsened because of his disability. Whereas he used to be able to walk a golf course (albeit with difficulty), he can no longer do so. As noted, he is at substantial risk of serious physical harm by the mere act of walking.

Dr. Donald Jones, plaintiff's treating physician, counsels that it is medically necessary for Casey Martin to be permitted a cart it [sic] he is to play the game of golf. As he summarized plaintiff's condition:

> [T]he medical records reflect a 25-year old male with a rare congenital vascular malformation of the right lower extremity which has led to, number one, chronic pain secondary to vascular engorgement and progressive loss of bone stock, pain so severe that he has at least considered to explore the use of time contingent narcotics; number two, a documented sleep disorder secondary to chronic pain which leads, according to Dr. Holmes, to an exhaustion syndrome; number three, the need to wear two compression stockings at all times; number four, it has resulted in marked muscular atrophy and weakness in his right calf; number five, it has affected his knee through multiple intra-articular bleeds, causing abnormalities which are painful; and number six, and most important from the orthopedic aspect, it has resulted in a weakened tibia which is at risk for fracture and potential limb loss and/or serious post-fracture complications.

Transcript (#) at pp. 99-100.

Defendant PGA Tour does not contest that plaintiff has a disability within the meaning of the ADA, nor does it contest that his disability prevents him from walking the course during a round of golf. However, prior to this trial, defendant did not review plaintiff's medical records nor view the

videotaped presentation of his condition. The PGA's position in this case has been twofold:

First, it asserts that the ADA does not apply to its professional golf tournaments; and

Second, the PGA asserts that the requirement of walking is a substantive rule of its competition and that a waiver of the rule would, accordingly, result in a fundamental alteration of its competitions, which the ADA does not require.

The first defense raised by the PGA—that the ADA is inapplicable to its tournaments—has been extensively discussed in this court's order dated January 30, 1998(# 69), wherein I found that the PGA Tour was not exempt, as a "private club," from ADA coverage and also found that its tournaments were conducted at places—i.e., golf courses—that were specifically included within the definition of places of "public accommodation" subject to the ADA.

The second defense encompasses the concept that the ADA does not require a covered entity to work a fundamental alteration of the nature of its business or programs in order to accommodate the disabled, nor need the entity accommodate if to do so would result in an undue hardship to the entity.

A few examples suffice to illustrate this point: Suppose a bookstore normally does not stock books in braille. A blind customer demands the accommodation of a supply of such books. The bookstore need not comply with the request, as such an accommodation would fundamentally alter the nature of its business. *See* 28 C.F.R. Ch. 1 Pt. 36, App. B at p. 632 (July 1, 1997 edition).[12] Or, to use another example cited by

[12] If the disabled person were an employee of the bookstore, however, and required a braille-encoded computer to perform her tasks, a different analysis would be applied and the question would be whether the accommodation would be an undue hardship (e.g., too great a financial burden) on the employer. *See* 42 U.S.C. §§ 12112(b)(5)(A), 12111(10). Because I find that Casey Martin is not an employee of the PGA Tour

the PGA, a day care center normally does not provide individualized care (*i.e.*, one attendant for each child) to its customers. A disabled child, in need of individualized attention, requests such an accommodation. The day care center need not comply because such would fundamentally alter the nature of the service the center provides.

There are few reported cases wherein the ADA has been applied to sports programs:

The Sixth Circuit Court of Appeals applied the ADA to the Michigan High School Athletic Association on two separate occasions regarding eligibility requirements. In *McPherson v. MHSAA*, 119 F.3d 453 (6th Cir.1997) the court considered whether the MHSAA's eight semester rule[13] violated the ADA when applied to a student with a learning disability which prevented him from completing high school in eight semesters. The court initially noted that the simple fact that the MHSAA labeled the rule necessary did not make it so, but that the court had an independent responsibility to determine whether the rule is in fact necessary. *Id.* at 461. The court determined the rule was necessary.[14] The court then found that requiring the MHSAA to waive the rule would work a fundamental alteration in its sports programs and would impose an immense financial and administrative burden on

(infra), I focus only on the issue of whether he is entitled to his requested accommodation (the use of a golf cart) as an independent contractor playing in defendant's tournaments which are held at places of public accommodation.

[13] The MHSAA's eight semester rule provided that any student who has completed eight semesters of high school is ineligible for interscholastic sports competition.

[14] The purpose of the rule was to limit the level of athletic experience and range of skills of the players in order to create a more even playing field for the competitors, to limit the size and physical maturity of high school athletes for the safety of all participants, and to afford the players who observe the rule a fair opportunity to compete for playing time.

the MHSAA by forcing it to make "near impossible determinations" about a particular student's physical and athletic maturity.

Two years prior the court similarly found that waiver of an age regulation in high school sports fundamentally altered the program. *See Sandison v. MHSAA*, 64 F.3d 1026 (6th Cir.1995). The court noted, as it did in *McPherson*, that individually determining whether each older student possessed an unfair competitive advantage was not a reasonable accommodation. *Id.* at 1037.

The Eighth Circuit was confronted with a similar age eligibility rule of the Missouri State High School Athletic Association. *See Pottgen v. MSHSAA*, 40 F.3d 926 (8th Cir.1994). In *Pottgen* the court found that the age requirement was essential to the high school athletic program and that an individualized inquiry into the necessity of the requirement in the plaintiff's case was inappropriate. *Id.* at 930.[15]

The District Court for the District of New Jersey found that complete abandonment of the "core course" requirement would fundamentally alter the nature of NCAA athletic programs. *Bowers v. National Collegiate Athletic Assoc.*, 974 F.Supp. 459 (D.N.J.1997). The *Bowers* court found the "core course" requirement essential because it was reasonably necessary to accomplish the purpose of the NCAA program. However, the court also noted that the rule authorized waiver

[15] Plaintiff cites two district court cases in which an individualized inquiry was conducted to determine whether waiving the age rule for the individual plaintiffs would undermine the purpose of the rule, but each was vacated as moot. *See Johnson v. Florida High School Activities Assoc.*, 899 F.Supp. 579 (M.D.Fla.1995), *vacated as moot* 102 F.3d 1172 (11th Cir.1997); *Dennin v. Conn. Interscholastic Athletic Conference*, 913 F.Supp. 663 (D.Conn.1996), *vacated as moot* 94 F.3d 96 (2nd Cir.1996).

of the requirement on a case-by-case basis for individualized consideration and as such was adequate to reasonably accommodate students with learning disabilities. *Id.* at 467.

From this rather limited background of athletic ADA case law, the PGA asserts that the court should focus on whether an athletic rule is "substantive"—*i.e.*, a rule which defines who is eligible to compete or a rule which governs how the game is played. If it is, according to the PGA's argument, the rule cannot be modified without working a fundamental alteration of the competition, and the ADA consequently does not require any modification to accommodate the disabled.

I note, however, that even in those cases most heavily relied upon by the PGA the courts examined the purpose of each of the rules in question to determine if the requested modification was reasonable.

In *Sandison* and *McPherson*, the eligibility requirements imposed were closely fitted with the purpose of high school athletics—to allow students of the same age group to compete against each other. The learning-disabled plaintiffs who had passed beyond the age or semester limits while still remaining in high school could not compete without fundamentally altering the nature of the services at issue. That the plaintiffs in those cases may have been less skilled athletes than their peers missed the point. High school athletics are for youths of a certain age group (14-18). Eliminating the curriculum or age-eligibility requirements for high school athletes clearly changes the fundamental nature of such competition.

Similarly, in *Bowers*, the issue was the "core course" requirement for student-athletes at the collegiate level. An athlete had to be a qualified student to compete. A complete waiver of the academic requirement would obviously alter the fundamental nature of the program, and, as noted, individual assessments and exemptions were permitted.

That is not to say that athletic associations have unfettered discretion to set eligibility requirements as they see fit. May a high school athletic association expressly define eligibility requirements so as to exclude the learning or other disabled? If it did, would the courts simply be left to conclude that any change in such a rule would fundamentally alter the rules of competition and by virtue of such be unreasonable? For example, may a high school league promulgate a rule prohibiting competitors from using corrective lenses to assist their vision at athletic events—and be immune from ADA scrutiny because an accommodation to the sight-impaired would fundamentally alter a rule of competition?

Essentially, then, the PGA Tour's contention that it alone may set the rules of competition, and that any modification of any of its rules (which may be necessary to accommodate the disabled) fundamentally alters the nature of PGA tournaments, is simply another version of its argument that the PGA Tour is exempt from the provisions of the ADA. It is not. The court has the independent duty to inquire into the purpose of the rule at issue, and to ascertain whether there can be a reasonable modification made to accommodate plaintiff without frustrating the purpose of the rule, and without altering the fundamental nature of PGA Tour competition.

Although the PGA Tour is a professional sports organization and professional sports enjoys certainly, a much higher profile and display of skills than collegiate or other lower levels of competitive sports, the analysis of the issues does not change from one level to the next. High school athletic associations have just as much interest in the equal application of their rules and the integrity of their games as do professionals. Put differently, if it is unreasonable to accommodate Casey Martin's disability with a cart at the PGA Tour level because of its rules of competition, it is equally unreasonable to so accommodate a similarly disabled

golfer at the high school level if the same rules were applicable.

It is also worth noting that the ADA does not distinguish between sports organizations and other entities when it comes to applying the ADA to a specific situation. Businesses and schools have rules governing their operations which are of equal importance (in their sphere) as the rules of sporting events. Conversely, the disabled have just as much interest in being free from discrimination in the athletic world as they do in other aspects of everyday life. The key questions are the same: does the ADA apply, and may a reasonable modification be made to accommodate a disabled individual?

An example from a prior case filing illustrates the tension that exists between the disabled seeking equal access and an entity that must modify its rules or practices to accommodate: A man afflicted with cerebral palsy books an international flight on a commercial airline from Oregon to Germany. The first leg of the flight takes the disabled individual from Eugene, Oregon to Chicago, Illinois, where he changes planes for the next leg of the trip. The captain of the airlines for the international leg, however, decides that the individual's condition (which hasn't changed since the first flight) renders him unfit to travel safely, and so he orders him off the plane. This unfortunate person's journey is interrupted solely because of his disability, and he is relegated to languish in a hotel room (away from his home and away from his destination) until a captain can be found who is willing to admit him as a passenger.[16]

The rule at stake in the above example is the age-old rule that the captain is in charge of the ship. This rule has an obvious and important substantive purpose. Nonetheless, are the disabled not entitled to travel to their destinations with the

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[16] *See* Civil Number 93-6068-TC.

same degree of reliance on their arrangements as the able-bodied? Put differently, doesn't the ADA (or its counterpart, the Rehabilitation Act) require the airlines to modify the rule to provide a reasonable accommodation—i.e., a flight there and back without interruption by an uncomfortable captain—under the specific circumstances of his case, even though such might modify a substantive rule of its operation?

It is with these concepts in mind that I approach Casey Martin's request for an accommodation.

First, I set forth (and perhaps restate to some extent), a general overview of the ADA. As I reject (without detailed elaboration[17]) plaintiff's claims that he is a PGA Tour employee and that the Nike Tour is a "course or examination" under the Act, I will discuss only his remaining claim, *i.e.*, the "public accommodation claim" under Title III of the Act.

Title III of the ADA provides:

> No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation.
>
> . . . .
>
> discrimination includes failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of the good, service, facility, privilege, advantage, or

[17] For the most part, I agree with, and incorporate by reference, the argument set forth by defendant in its memorandum in support of summary judgment regarding the employee, and course and exam issues. *See* Defendant's Memo (# 21).

> accommodation being offered or would result in an undue burden.
>
> . . . .
>
> discrimination also includes the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered.

42 U.S.C. §§ 12182(a), 12182(b)(2)(A)(i) and (ii)

The ADA was enacted by Congress in 1990 "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." Congress found that "individuals with disabilities continually encounter various forms of discrimination, including . . . failure to make modifications to existing facilities and practices. . . ." Congress intended to protect disabled persons not just from intentional discrimination but also from "thoughtlessness," "indifference," and "benign neglect." *See Crowder v. Kitagawa*, 81 F.3d 1480, 1483-1484 (9th Cir.1996).

ADA defines disability with respect to an individual as:

> (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
>
> (B) a record of such impairment; or
>
> (C) being regarded as having such an impairment.

42 U.S.C. § 12102(2).

The phrase physical or mental impairment means:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

28 C.F.R. § 36.104(1).

The phrase major life activity means:

functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

28 C.F.R. § 36.104(2).

The following factors should be considered in determining whether an individual is substantially limited in a major life activity:

1. the nature and severity of the impairment;

2. the duration or expected of the impairment; and

3. the permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment.

29 C.F.R. § 1630.2(j)(2).[18]

Temporary, non-chronic impairments of short duration, with little or no long term or permanent impact, are usually

[18] The regulations concerning temporary impairments are found in the section concerning Title I (employment) of the ADA, but are useful in determining whether a disability exists under Title III.

not disabilities. Such impairments may include, but are not limited to, broken limbs, sprained joints, concussions, etc. *Sanders v. Arneson Products*, 91 F.3d 1351, 1354 (9th Cir.1996). Temporary injury with minimal residual effects cannot be the basis for a sustainable claim under the ADA. *Id.*

Plaintiff has the burden of demonstrating that he is disabled and has done so. Plaintiff also has the burden of proving that a modification was requested and that the requested modification is reasonable. "Plaintiff meets this burden by introducing evidence that the requested modification is reasonable in the general sense, that is, in the general run of the cases." *Johnson v. Gambrinus Co.*, 116 F.3d 1052, 1059 (5th Cir.1997). With respect to this element, the use of a cart is certainly not unreasonable in the game of golf. As noted hereafter, the Rules of Golf do not require walking, and even the PGA Tour permits cart use at two of the four types of tournaments it stages.[19] While the PGA Tour permits cart use at those two events, it imposes no handicap system or stroke penalties on those who opt for carts as opposed to those who elect to walk. This is certainly compelling evidence that even the PGA Tour does not consider walking to be a significant contributor to the skill of shot-making. In addition, the NCAA and PAC 10 athletic conference permit the use of carts as an accommodation to disabled collegiate golfers. Under the Johnson analysis such evidence meets plaintiff's burden of demonstrating that a cart is a reasonable

[19] The PGA Tour stages the PGA Tour, senior PGA Tour, the Nike Tour, and the Qualifying School Tournament. The Senior Tour is for PGA Tour golfers of 50+ years in age. The Qualifying School Tournament screens those who are competing for entry into the PGA Tour and Nike Tour. The PGA Tour admits the most skilled golfers; the Nike Tour admits those at the next highest level. The PGA Tour allows cart use on the Senior PGA Tour and in the two preliminary rounds of the Qualifying School Tournament.

modification to accommodate his disability in the game of golf in the general sense, that is in the general run of cases.

Defendant then must make the requested modification unless it meets its burden of proving that the requested modification would fundamentally alter the nature of its public accommodation. "The type of evidence that satisfies this burden focuses on the specifics of the plaintiff's or defendant's circumstances and not on the general nature of the accommodation." Id. Defendant argues that an individualized inquiry into the necessity of the walking rule in Casey Martin's case is not appropriate. *See e.g., Pottgen*, 40 F.3d at 930-31. However, Johnson suggests otherwise. An individualized assessment finds support in the Ninth Circuit as well. *See Crowder*, 81 F.3d at 1486 ("the determination of what constitutes reasonable modification is highly fact-specific, requiring case-by-case inquiry"); *see also Stillwell v. Kansas City, Missouri Bd. of Police Commissioners*, 872 F.Supp. 682, 687 (W.D.Mo.1995) (individualized assessment necessary to determine if plaintiff can meet the purpose of defendant's rule). Thus, the ultimate question in this case is whether allowing plaintiff, given his individual circumstances, the requested modification would fundamentally alter PGA and Nike Tour golf competitions.[20]

The Rules of Golf

The general "Rules of Golf" are promulgated by the United States Golf Association (USGA) and the Royal and Ancient Golf Club of St. Andrews, Scotland (R & A).

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[20] At this stage of the analysis, I agree with the PGA that only the nature of PGA and Nike Tour golf may be considered in determining whether the requested modification would cause a fundamental alteration. However, as noted, I do not agree with defendant's position that this analysis is to be undertaken without an individualized assessment of Casey Martin's disability.

Rule 1-1 provides as follows:

> The Game of Golf consists in playing a ball from the teeing ground into the hole by a stroke or successive strokes in accordance with the rules.

Nothing in the Rules of Golf requires or defines walking as part of the game. In its reported Decisions on the Rules of Golf regarding the Rules of Golf, the USGA has expressed that it is permissible to ride a cart in golf unless such is prohibited by the local rules defining the conditions of competition for particular events. In Appendix I to the Rules of Golf we find:

> Transportation
>
> If it is desired to require players to walk in a competition, the following condition is suggested:
>
> Players shall walk at all times during a stipulated round.

The PGA Tour promulgates a pamphlet entitled "Conditions of Competition and Local Rules" which govern PGA Tour and Nike Tour tournaments. The preamble to this document provides, in pertinent part, as follows:

> The Rules of the United States Golf Association govern play, as modified by the PGA Tour.
>
> One of those modifications appears in Section A--Conditions of Competition:
>
> ¶ 6 *Transportation--Appendix I*
>
> Players shall walk at all times during a stipulated round unless permitted to ride by the PGA Tour Rules Committee.

No written policy has been cited by either party which governs the Rules Committee in its exercise of discretion regarding a waiver of the walking requirement. On the

occasions when the walking rule has been waived, it has been waived for all competitors (e.g., to shuttle players from the 9th green to the 10th tee where considerable distance is involved). No waiver has ever been granted for individualized circumstances (such as disability).

Prior to requesting use of a cart as an accommodation for his disability, plaintiff explored the possibility of various artificial aids to walking. I allow Dr. Jones to describe what those were, and why they won't work:

> By August 1996 at the age of 24, Casey reported to me that he was having tremendous difficulty with ambulation. He was having great difficulty walking 18 holes of golf. He was not only having trouble with the golf, but was also now having significant discomfort with the requirements of daily living. At this point I immobilized his leg in a removable brace and started a physical therapy program. Neither was beneficial.
>
> By now Casey was becoming extremely frustrated, so I decided to accompany him during a number of rounds during the summer of 1996.

Q. You are talking about rounds of golf?

A. Rounds of golf.

Q. Okay.

A. In hopes that I could observe some characteristics of his gait that would allow me to provide him with some form of stabilizing device. During this time, we tried in—shoe orthosis; that is, shoe inserts, which were of minimal benefit.

Q. What were they intended to do?

A. They will stabilize the hindfoot, and there's a bio-mechanical region whereas if you stabilize the hindfoot, the tibia doesn't rotate with the gait and will hopefully

decrease the pain.

Q. The right leg is slightly longer also?

A. Yes.

Q. Okay. And that right leg being longer, is due to this condition?

A. Yes.

Q. Okay. All right. What was next?

A. We also placed him into ankle-foot orthosis. Now, that's a plastic brace that extended from the toes to the mid-calf and is for the purpose of stabilizing his hindfoot and, also, protecting his tibia. Casey found that it was virtually impossible to golf in this device because it limited his hindfoot motion as well as the fact that it caused considerable discomfort over his calf which is very sensitive. It was during this time that I became increasingly concerned about the well being of Casey's lower extremity. I can recall playing two rounds of Golf with Casey where he was unable to finish the 18 holes while walking. I also recall this summer one round of golf where we used a golf cart. The ground was moderately wet and unstable. We could not park as close to the tee box or to the green as we normally would. As a result, Casey, had to stop his round at about the 14th hole because he was having difficulty just getting to the tee box and green.

Transcript (#) at pp. 88-90.

Thus, Casey Martin cannot walk the course, and only a cart will permit him to compete on the Nike Tour. As with the disabled airline passenger, he finds himself in conflict with a substantive rule of operation.

According to the PGA Tour, the purpose of the walking rule is to inject the element of fatigue into the skill of shot-

making. I accept that assertion and expressly find from the evidence produced at trial that such is a cognizable purpose[21] of the rule from the standpoint of the ADA.

The question thus is—may the walking rule be modified to accommodate Casey Martin without fundamentally altering the nature of the game being played at the PEA Tour's tournaments?

In answering the question, as noted previously, I reject the defendant's contention that the plaintiff's individual circumstances are irrelevant to the inquiry. *See Johnson, Crowder, Stillwell*, cited *supra* p. 1249.

Furthermore, the fatigue factor injected into the game of golf by walking the course cannot be deemed significant under normal circumstances. Dr. Gary Klug, a professor in physiology at the University of Oregon, and an expert on the physiological basis for fatigue, calculates that approximately 500 calories are expended in walking a course of golf (approximately 5 miles of walking in a 5 hour time period). He describes the energy expenditure as follows: "nutritionally it's less than a Big Mac." He further notes that these calories are expended over a 5 hour period, and that the golfers have numerous intervals of rest and opportunities for refreshment (or calorie replacement).

While the PGA Tour cited Ken Venturi's memorable 1964 U.S. Open win in which he overcame severe and near-fatal exhaustion as he finished the course in high heat and humidity, Dr. Klug indicates that Mr. Venturi's fatigue was induced by heat exhaustion and fluid loss—not walking. According to Dr. Klug, tests have disclosed that fatigue from exercise—as measured by oxygen consumption—is not significantly influenced by heat or humidity. Rather,

[21] Mere tradition would not be a cognizable purpose—i.e., one entitled to any weight.

dehydration is the critical factor in such situations. Many spectators at the 1964 U.S. Open had to be treated for exhaustion as well, and they were not walking.

Furthermore, fatigue at lower intensity exercise[22] is primarily a psychological phenomenon, according to Dr. Klug. Stress and motivation are the key ingredients here. Place an individual in the middle of the Los Angeles freeway at rush hour, and he will get fatigued in a hurry without moving a muscle. If someone pedals a bicycle for 30 minutes and says "I've had it," but is promised $1,000 if he goes another 5 minutes, his fatigue may well disappear.

Every individual differs in their psychological fatigue components, but walking has little to do with such components. If anything, from the evidence introduced at trial, most PGA Tour golfers appear to prefer walking as a way of dealing with the psychological factors of fatigue.[23]

[22] Walking 5 miles in 5 hours cannot be equated with high intensity exercise. A requirement of running, or even walking, 5 miles at a continuous gait would certainly induce more fatigue from the physiological standpoint, but that is not what the PGA Tour requires. To quote from Nike Tour golfer Eric Johnson:

> Q. does [walking] create any problem for you?
>
> A. Not more than the temperature outside would cause a person to sweat just standing there or cause a person to be very cold just standing there. There are--there are cases and instances where we play golf courses that are hilly where you might have to walk up a hill, and you would be more exerted when you get to the top of the hill than if you were walking a flat surface or downhill. But because of the pace of play and our preshot routines, we know to not to hit when we are winded or we know not to hit until we are ready to hit the golf ball. So I can't think of a time in my golfing career where I've ever hit a golf shot where I've felt that I wasn't ready to hit.

Transcript (#) at p. 33.

[23] As Nike Tour pro Eric Johnson described when asked why he preferred to walk:

When given the option of cart-riding or walking—such as at the Senior PGA Tour or PGA Tour Qualifying Tournament--the vast majority have opted to walk. Why would this be if walking truly fatigued them so that they hit worse shots than if they ride? As the saying goes, "the proof of the pudding is in the eating."

And then we come to Casey Martin's unique circumstances. If the majority of able-bodied elect to walk in "carts optional" tournaments, how can anyone perceive that plaintiff has a competitive advantage by using a cart given his condition?

The fatigue plaintiff endures just from coping with his disability is undeniably greater than the fatigue injected into tournament play on the able- bodied by the requirement that they walk from shot to shot. Walking at a slow pace[24]—to

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I prefer to walk, probably for a number of reasons. One, it's how I've played golf most of my life, and it keeps me in rhythm. There are times when I would prefer to walk because the temperature outside is such that if you are in the golf cart, the wind chill factor drops when you are riding in it and you are too cold. Weather's a real large contributing factor in walking. I would much rather walk if it was raining because I am able to stay under my umbrella and not get as wet, my equipment stays dry, those types of things.

Q. All right. Are you better able to get the feel of the course when you walk as opposed to ride, or do you know?

A. You get a full effect of the elements. Everything from changes in wind direction from one part of the fairway to the other, to being able to watch what the flag stick's doing on the green, to walking down the fairway versus being in the golf cart trying not to run somebody over.

Transcript (#) at p. 17.

[24] The PGA Tour does not require golfers to walk rapidly to their next shot. There do not appear to be any time limits on getting to the ball, although a golfer has 5 minutes to find a lost ball. Once at the ball, a golfer has 40 seconds to hit it. If a golfer is closest to the hole, he has additional time to rest while the other members of his group hit their shots.

the able-bodied—is a natural act, of little more difficulty than breathing. It is how we were designed to move from place to place.

Walking for Casey Martin is a different story.

In the first place, he does walk while on the course—even with a cart, he must move from cart to shot and back to the cart. In essence, he still must walk approximately 25% of the course. On a course roughly five miles in length, Martin will walk 1 1/4 miles.

The plaintiff is in significant pain when he walks, and even when he is getting in and out of the cart. With each step, he is at a risk of fracturing his tibia and hemorrhaging. The other golfers have to endure the psychological stress of competition as part of their fatigue; Martin has the same stress plus the added stress of pain and risk of serious injury. As he put it, he would gladly trade the cart for a good leg. To perceive that the cart puts him—with his condition—at a competitive advantage is a gross distortion of reality.

As plaintiff easily endures greater fatigue even with a cart than his able- bodied competitors do by walking, it does not fundamentally alter the nature of the PGA Tour's game to accommodate him with a cart.

It lends emphasis to the point that the walking rule may be modified without fundamentally altering the PGA's game to consider several other PGA rules in a hypothetical context.

Rule 6-4 of the Rules of Golf specifies:

Caddie

The player may have only one caddie at any one time, under penalty of disqualification.

Rule 8 provides:

Advice; Indicating Line of Play

Definitions

"Advice" is any counsel or suggestion which could influence a player in determining his play, the choice of a club or the method of making a stroke.

Information on the Rules or on matters of public information, such as the position of hazards or the flagstick on the putting green, is not advice.

The "line of play" is the direction which the player wishes his ball to take after a stroke, plus a reasonable distance on either side of the intended direction. The line of play extends vertically upwards from the ground, but does not extend beyond the hole.

And Rule 8-1 states:

Advice

During a stipulated round, a player shall not give advice to anyone in the competition except his partner. A player may ask for advice during a stipulated round from only his partner or either of their caddies.

May these be modified to accommodate a disabled golfer--e.g., a blind golfer?

Interestingly, the USGA promulgates a pamphlet entitled *A Modification of the Rules of Golf for Golfers with Disabilities*. The Preface to the Pamphlet reads:

> This publication contains permissible modifications to the Rules of Golf for use by disabled golfers. This is not intended to be a revision of the Rules of Golf as they apply to able-bodied players. As is the case for the Rules of Golf themselves, these modifications, along with the philosophy expressed herein, have been agreed upon by the United States Golf Association and the Royal and Ancient Golf Club of St. Andrews, Scotland.

Under the category of Blind Golfers, the pamphlet provides:

Definition of "Coach"

The status of the coach and the duties which he may perform should be defined clearly. Without such clarification, it would be difficult, for example, to determine how a blind golfer must proceed if his ball were to strike his or another player's coach after a stroke. Therefore, the following definition is recommended:

> Coach
>
> A "coach" is one who assists a blind golfer in addressing the ball and with the alignment prior to the stroke. A coach has the same status under the rules as a caddie.
>
> Note: A player may ask for and receive advice from his coach.

And the Caddie and Advice rules are modified as follows:

Rule 6-4 (Caddie)

There is nothing in the rules which would prohibit the coach of a blind golfer from functioning as his caddie. For a variety of reasons, however, a coach may not be able to perform the duties of a caddie. Therefore, it is permissible for a blind golfer to have both a coach and a caddie. In such circumstances, however, the coach may not carry or handle the player's clubs except in helping the player take his stance or him as permitted by analogy to Decision 6-4/4.5. Otherwise, the player would be subject to disqualification for having more than one caddie.

Rule 8-1 (Advice)

In view of the Definition of "Coach," it is recommended that Rule 8-1 be modified as follows:

8-1. Advice

During a *stipulated round*, a player shall not give *advice* to anyone in the competition except his partner. A player may ask for advice during a stipulated round from only his partner, either of their caddies or, if applicable, their coaches.

Judy Bell, a former president of the USGA, testified that the Golfers with Disabilities pamphlet was not meant for the PGA Tour, but only for recreational golfers. While that may be, it begs the question of how the PGA Tour would handle the request of a blind pro golfer to have a coach in addition to a caddie. At oral argument, the attorney for the Tour was asked whether Rules 6- 4 and 8-1 could be modified without fundamentally altering the nature of the PGA's competition. To quote from the colloquy:

THE COURT: How about the caddie and the coach for the blind golfer, as the pamphlet describes?

MR. MALEDON: Your Honor, my answer would be the same. As long as it does not fundamentally alter the nature of the competition, there's not a problem with it. But again, You Honor, you'd have known the facts. You'd have to look at the purpose for the rule. And I submit to you, Your Honor, that engaging in those kinds of analogies do not advance the ball in terms of what we are talking about here.

THE COURT: If I look at whether the purpose of the walking rule is to enhance competition by injecting fatigue into the equation, do I look at what Mr. Martin's disability does to him specifically insofar as inducing fatigue?

MR. MALEDON: No, Your Honor Absolutely not.

The paradox presented in the PGA Tour's position is readily apparent. A modification of the "one caddie only" rule to accommodate a blind golfer by providing him with a coach does not become the "reasonable" thing to do unless the PGA first conducts an individualized assessment of the golfer's disability--i.e., the PGA Tour must first recognize that he is blind, and then consider whether providing him a coach under his circumstances would give him a competitive advantage over the other golfers who aren't blind and thus don't need a coach. Yet in Casey Martin's situation, the PGA Tour adamantly refuses to assess the requested modification in light of the specifics of his disability. Inconsistently, it insists in this case that any modification of any of its rules would fundamentally alter the nature of its competition.

The rules, as demonstrated, are not so sacrosanct. The requested accommodation of a cart is eminently reasonable in light of Casey Martin's disability.

SO ORDERED.

UNITED STATES DISTRICT COURT
D. OREGON.

No. CIV. 97-6309-TC.

CASEY MARTIN,
Plaintiff,

v.

PGA TOUR INC., a Maryland corporation,
Defendant.

Jan. 30, 1998.

ORDER

COFFIN, United States Magistrate Judge:

Plaintiff brings this action pursuant to the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101-12213. On January 26, 1998, the court heard oral arguments on defendant PGA TOUR's motion (# 20) for summary judgment and plaintiff Casey Martin's cross-motion (# 44) for partial summary judgment. After argument, the court made oral findings and rulings, denying the Tour's motion in part and granting Martin's motion in part. This written order supplements and elaborates on the oral findings.

BACKGROUND

The ~~PGA Tour~~ is a non-profit association of professional golfers. The PGA sponsors and cosponsors professional golf events on three tours: the regular PGA Tour, with approximately 200 players at any given time; the Senior PGA Tour, with approximately 100 players; and the Nike Tour, with approximately 170 players.

There are various ways to gain playing privileges on the tours conducted by the PGA. Chief among them is a three-stage qualifying school tournament. The first stage consists of 72 holes. Those who score well enough in this stage advance to the second stage consisting of 72 holes. The top qualifiers, approximately 168 players, advance to the third and final stage consisting of 108 holes. The lowest 35 finishers plus ties are awarded playing privileges on the regular PGA Tour. The next 70 lowest scoring players obtain privileges to play on the Nike Tour. A player failing to qualify for the regular PGA Tour, but qualifying for the Nike Tour may obtain the privilege to play on the PGA Tour by winning three Nike Tour tournaments during a single season or by finishing in the top fifteen places on the Nike Tour money list.

To enter the qualifying school tournament, a prospective player must pay a $3,000 fee and submit two letters of reference. Plaintiff in this case entered the qualifying school tournament and made it through the first and second stages.

In the first two stages of the qualifying tournament, players are permitted to use golf carts. In the third stage, as well as on the regular PGA Tour and the Nike Tour, players are required to walk and are required to use caddies.[25] Plaintiff contends he suffers from a debilitating disease known as Klippel-Trenaunay-Weber Syndrome, and for purposes of this motion the Tour does not contest this assertion. Klippel-Trenaunay-Weber Syndrome is a venous malformation which curtails blood circulation in plaintiff's right leg. This condition has resulted in significant atrophy in the lower leg and bone deterioration of the tibia. Plaintiff further contends that his physical impairment substantially limits his ability to walk. Plaintiff filed this action, pursuant to the ADA, seeking

[25]Golf carts are permitted on the Senior PGA Tour which involves golfers 50 years and older.

to enjoin defendant's "no cart" rule during the third stage of the qualifying school tournament, and on the PGA and Nike Tours. Plaintiff asserts that by failing to provide him with a cart, defendant fails to make its tournaments accessible to individuals with disabilities in violation of the ADA.

This court granted a preliminary injunction directing defendant to allow plaintiff to use a cart during the third stage of the qualifying school tournament. Defendant then lifted the no cart rule for all players during the third stage of the qualifying school tournament. Plaintiff scored well enough in the tournament to attain playing privileges on the Nike Tour. This court extended the injunction by stipulation of both parties to include the first two tournaments on the Nike Tour. Defendant now moves for summary judgment contending that the ADA does not apply to it or its tournaments.

STANDARDS

Summary judgment is appropriate where "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). The initial burden is on the moving party to point out the absence of any genuine issue of material fact. Once the initial burden is satisfied, the burden shifts to the opponent to demonstrate through the production of probative evidence that there remains an issue of fact to be tried. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2552- 53, 91 L.Ed.2d 265 (1986). Rule 56(c) mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to a judgment as a

matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof. *Id.* at 323, 106 S.Ct. at 2552. There is also no genuine issue of fact if, on the record taken as a whole, a rational trier of fact could not find in favor of the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348, 1355, 89 L.Ed.2d 538 (1986); *Taylor v. List*, 880 F.2d 1040 (9th Cir.1989).

On a motion for summary judgment, all reasonable doubt as to the existence of a genuine issue of fact should be resolved against the moving party. *Hector v. Wiens*, 533 F.2d 429, 432 (9th Cir.1976). The inferences drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. *Valandingham v. Bojorquez*, 866 F.2d 1135, 1137 (9th Cir.1989). Where different ultimate inferences may be drawn, summary judgment is inappropriate. *Sankovich v. Life Insurance Co. of North America*, 638 F.2d 136, 140 (9th Cir.1981).

DISCUSSION

Plaintiff alleges in his first claim for relief that defendant is a private entity which is or operates a place of public accommodation. As a result, plaintiff contends that defendant is subject to the ADA's prohibition of discrimination on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to) or operates a place of public accommodation. *See* 42 U.S.C. § 12182. Plaintiff alleges in his second claim that defendant is a private entity that offers examinations or courses related to applications, licensing, certifications, or credentialing for professional or trade purposes. Plaintiff thus contends that defendant is

subject to the ADA's requirement that any person offering examinations or courses related to applications, licensing, certification, or credentialing for professional or trade purposes shall do so in a place and manner accessible to persons with disabilities. *See* 42 U.S.C. § 12189. Plaintiff alleges in his third claim that defendant is an employer as defined in the ADA. *See* 42 U.S.C. § 12111(5). Thus, plaintiff contends that defendant is prohibited from discrimination against a qualified individual with a disability because of the disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment. 42 U.S.C. § 12112(a).

Defendant PGA Tour contends that it is entitled to summary judgment on all three of plaintiff's claims because it is a private non-profit establishment exempt from the ADA. *See* 42 U.S.C. § 12187.[26] Defendant argues, in the alternative, that even if it is not a private club it is entitled to summary judgment on counts one and two of plaintiff's complaint because the PGA and Nike Tour competitions do not constitute "places of public accommodation," and that the Nike Tour is not an examination or course. In addition, defendant argues that it is entitled to summary judgment in count three of plaintiff's complaint because plaintiff is not an "employee" of the PGA Tour.

A. Defendant is not Exempt from the ADA

As noted, a private club or establishment is exempt from coverage under Title III of the ADA (as well as Title II of the

[26] The exemption from coverage under the ADA found at 42 U.S.C. § 12187 applies to Title III of the ADA (public accommodations and services operated by private entities). With respect to Title I (prohibiting discrimination with regard to employment), an employer does not include a bona fide private membership club. *See* 42 U.S.C. § 12111(5)(B).

Civil Rights Act of 1964, which prohibits discrimination on the grounds of race, color religion, or national origin). Because of the importance of these laws, exemptions are narrowly construed and the burden of proof rests on the party claiming the exemption. *See Nesmith v. YMCA*, 397 F.2d 96, 101 (4th Cir.1968); *Quijano v. University Federal Credit Union*, 617 F.2d 129, 131-32 (5th Cir.1980).

Before one can answer the question of whether the PGA Tour is entitled to the private club exemption, one must first define the nature of the entity:

Succinctly put, the Tour is an organization formed to promote and operate tournaments for the economic benefit of its members, a highly skilled group of professional golfers. As with all professional sports organizations, the Tour is part of the entertainment industry, offering competitive athletic events to the public, which in turn generate sponsorship of the events, network fees, advertising revenue, and, ultimately, the tournament prize money awarded the competitors.

The Tour, in short, is a commercial enterprise. The success of the Tour in generating revenue for its members is in direct proportion to public participation as spectators and viewers of the Tour's tournaments. Without this public participation, the primary objective of the Tour could not be achieved.

One of the principal cases relied upon by the PGA for its exemption claim actually cuts against its position:

In *Welsh v. Boy Scouts of America*, 993 F.2d 1267 (7th Cir.1993), the court found that the Boy Scouts was indeed a private club notwithstanding its membership total of over five million scouts.[27] [FN3] The *Welsh* court focused keenly on the purpose of membership in the Scouts when it criticized the dissenter's emphasis on the size of the organization:

[27] Although the Welsh case involved the Civil Rights Act, the ADA and the Civil Rights Act are interrelated in terms and application.

> The dissent concludes that because the Boy Scouts have five million members ... it is neither selective nor private.... This conclusion not only exaggerates the facts, it ignores the purpose of the Scouts' existence and punishes the Boy Scouts for its success in recruiting future quality leaders of society. Certainly Congress did not intend to condition the private club exclusion from Title II on the popularity of the organization. *The more pertinent factor regarding selectivity is the nexus between the organization's purpose and its membership requirements.*

Id. at 1277. (emphasis added).

Regarding that purpose, the court had earlier observed:

> The purpose of Scouting ... is to equip youth of all races, colors and creeds to fulfill their duty to God, to mature personally, and to help others. This can only be achieved by a boy who believes in God. How does one who denies the very existence of a Supreme Being presuppose to follow the Oath of the Boy Scouts of America?

Id.

Just as the large membership in the Scouts did not deprive the organization of its private club status when its membership requirements were fitted with the purpose of the group, so the relatively small membership of the PGA Tour does not confer private status on this entity when its selectivity is counterbalanced with the Tour's purpose. Generating revenue for members scarcely seems to qualify as the type of protectable interest Congress had in mind when it excluded private clubs from coverage under the ADA and Civil Rights Act.

In *Quijano v. University Federal Credit Union*, 617 F.2d 129 (5th Cir.1980), the court ruled that the private membership club exception to the Civil Rights Act did not apply to a federally chartered credit union, notwithstanding its non-profit status. In doing so the court observed:

> One rarely abandons the path of logic and common sense when Webster is consulted for the precise meaning of a term. In reference to the type of club suggested by section 701(b)(2) exemption Webster's Third International Dictionary of the English Language offers the following definition at page 430:
>
> > club: an association of persons for social and recreational purposes or for the common promotion of some common object (as literature, science, political activity) usually jointly supported and meeting periodically, membership in social clubs usually being conferred by ballot and carrying the privilege of use of the club property.
>
> ....
>
> Credit unions, however useful they may be, exist for purely mercantile purposes and although they may be organized on a non-profit basis, member join credit unions in search of profits on their investments. Like . . . "auto clubs," credit unions are not clubs in any sense of the word.

Id. at 131, 133.

An analysis of the set of variables most commonly weighed by the courts in determining whether an organization is a bona fide private club mitigates against such a finding here. Those factors, as set forth in *United States v. Lansdowne Swim Club*, 713 F.Supp. 785 (E.D.Pa.1989) are listed and discussed as follows:

1. Genuine Selectivity

The Tour contends that because only very few golfers possess the requisite skills to become members of the Tour and compete at its events, and because these golfers are selected through competition at qualifying tournaments, its members are chosen through an exceptionally selective process and this factor weighs heavily in its favor.

Defendant's eligibility requirements, however, measure skills. They are not designed to screen out members based upon social, moral, spiritual, or philosophical beliefs, or any other criteria used to protect freedom of association values which are at the core of the private club exemption. *See Quijano*, 617 F.2d 129; *Welsh*, 993 F.2d 1267. *See also United States v. Jordan*, 302 F.Supp. 370, 376 (consideration is given to whether the organization has a civic, fraternal, or social purpose accomplished through membership screening). As with all sports, only the most skilled players achieve professional status. The pool of professional competitors will always be an extremely small percentage of those who participate in the sport at recreational or other non-professional levels, not to mention the general public. Such natural "weeding-out" selectivity is inherent to athletics, and does nothing to confer "privacy" to the organizations to which professionals matriculate.

2. Membership Control

Professional golfers who play in fifteen or more regular PGA Tour events in a year have voting rights.[28] But—which seems more to the point—new members are not voted in by the current members—they play their way in. *See Jordan*, 302 F.Supp. at 375 (consideration is given to whether the existing members have any control over the admission of

[28] The voting rights these golfers have is limited to voting for player directors from a slate of candidates chosen by the existing player directors. Only four members of the policy board, consisting of nine members, are player directors.

applicants for membership). The membership control of the organization does little to make it or keep it "private."

3. History of Organization

The organization has existed since 1968. It clearly was not formed to evade the Civil Rights Act or ADA. Of course, the fact that an organization is not a "sham" tells us it is "bona fide," but not that it is a "private club."

4. Use of Facilities by Nonmembers

Defendant contends that only its members participate as players in Tour Events. Plaintiff points to numerous nonmembers who participate in the tournaments as vendors, reporters, score keepers, volunteers, and members of the gallery.

The court finds this factor cuts against private club status. Of particular force is the heavy reliance by the Tour on public participation for the purpose of generating revenue for the tour. *See Smith v. YMCA*, 462 F.2d 634, 648 (5th Cir.1972) (a YMCA which enjoyed a substantial amount of revenue from the general public was not a private club); *Evans v. Laurel Links, Inc.*, 261 F.Supp. 474 (E.D.Va.1966) (a golf club which opened its lunch counter to the public, which restaurant generated $27,568 in revenue for the club, thereby subjected the entire golf course to the Civil Rights Act).

5. Club's Purpose

As discussed previously, the mercantile purpose of the PGA Tour weighs heavily against private club status.

6. Whether the Club advertises for Members

Courts have held that organizations which advertise and solicit new members do not fall within the private club exemption. *See Wright v. Salisbury Club, Ltd.*, 632 F.2d 309 (4th Cir.1980).

The PGA Tour is extensively covered by the media. Its existence is well known to even the most casual golfers and followers of sports. The Tour has no more need or incentive to advertise for golfers than do the Chicago Bulls for basketball players. The advertising factor carries little weight in the arena of professional sports.

7. Whether the Club is Nonprofit

The Tour is nonprofit, but yet its fundamental purpose is to enhance profits for its members. As in *Quijano*, the nonprofit status of a corporation that exists to further the commercial interests of its members does not weigh in favor of exempt status.

For the reasons stated, I reject the PGA Tour's argument that it is a private club and as such exempt from the ADA.

B. Defendant Operates a Place of Public Accommodation at the Golf Courses on which it Conducts its Tournaments

Defendant further contends that, if it is not found to be an exempt private club, the courses it operates are not open to the "general public" between the boundaries of play during its tournaments, and thus the tournament events are not "places of public accommodation."[29]

The term "public accommodation" is specifically defined to include the following places:

> (A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;
>
> (B) a restaurant, bar, or other establishment serving food or drink;

[29] Under the ADA, reasonable accommodations must be afforded the disabled using places of public accommodations.

> (C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;
>
> (D) an auditorium, convention center, lecture hall, or other place of public gathering;
>
> (E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;
>
> (F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;
>
> (G) a terminal, depot, or other station used for specified public transportation;
>
> (H) a museum, library, gallery, or other place of public display or collection;
>
> (I) a park, zoo, amusement park, or other place of recreation;
>
> (J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;
>
> (K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and
>
> (L) a gymnasium, health spa, bowling alley, *golf course*, or other place of exercise or recreation.

42 U.S.C. § 12181(7) (emphasis added).

A golf course is specifically included on the list.

Defendant argues, however, that its courses are only places of public accommodation in those areas actually accessed by

the public at large. It contends that since the public gallery is not allowed inside the playing area, the fairways and greens of its golf courses are not places of public accommodation.

This argument is flawed.

First, if the PGA were correct, this renders the private club exemption virtually irrelevant to the issue of whether so-called private country clubs, for example, must comply with the ADA. Using the logic of the PGA, if the country club were found not to be a "bona fide private membership club" (as the term is discussed in the previous section), it could nonetheless refuse to accommodate any handicapped members by pointing out it only admits the country club's members (and not the public at large) on its grounds.

Second, the statute and regulations do not support the concept that places of public accommodation have zones of ADA application. PGA cites cases wherein private facilities do not lose their exempt status on the private portions of its facilities simply by operating a discrete public accommodation area (e.g., a private country club renting space to a private day care center open to nonmembers has ADA obligations only with respect to the day care center, according to DOJ regulations). But this is a far cry from the proposition that an operator of a place of public accommodation can create private enclaves within the facility of public accommodation and thus relegate the ADA to hop-scotch areas. May the day care center in the above example rope off a section for use only by the country club's members and be exempt from the ADA within those boundaries? I think not.

The PGA further cites, as an example of dual public/private zones of public accommodation places, the typical major league baseball stadium. The PGA argues that the bleachers are subject to the ADA because that is where the public is

seated, but the dugout is not because the public is not allowed to mingle with the players therein.

What about a disabled manager of a team? May the St. Louis Cardinals refuse to construct a wheelchair ramp to the visitor's dugout to accommodate a disabled manager of the Chicago Cubs simply because spectators cannot go into the dugout?

In a somewhat similar case regarding the Rose Garden Arena, Magistrate Judge Donald Ashmanskas in finding that the executive suites in the arena, even though not open to the general public, are subject to the ADA stated:

> Many facilities that are classified as public accommodations are open only to specific invitees. For instance, a facility that specializes in hosting wedding receptions and private parties may be open only to invitees of the bride and groom, yet it clearly qualifies as a public accommodation. *See* 42 U.S.C. § 12181(7). Attendance at a political convention is strictly controlled, yet the convention center is still a place of public accommodation. *See* 42 U.S.C. § 12181(7). A gymnasium or golf course may be open only to authorized members and their guests, but that does not necessarily preclude it from being classified as a place of public accommodation. Id. A private school may be open only to enrolled students, but it is still a place of public accommodation. *Id.*

Independent Living Resources v. Oregon Arena Corp., 982 F.Supp. 698, 758- 59 (D.Or.1997)

What the PGA also overlooks is that people other than its own Tour members are indeed allowed within the boundary lines of play during its tournaments. What if a member-golfer opted to hire a disabled caddy? Once the caddy steps within the boundaries of the playing area of the golf course—a statutorily defined place of public accommodation—does he

step outside the boundaries of the ADA simply because the public at large cannot join him there? If this were the law, how could such be reconciled with the inclusion of private schools, whose corridors, classrooms, and restrooms are clearly not accessible to the public, on the list of places of public accommodations?

Accordingly, I reject defendant's argument that the ADA does not apply to the areas of competition on the golf course during tournaments.

C. Issue of Employment and Whether the Nike Tour is a Course or Examination

Whether plaintiff is an employee of the Tour and whether the Nike Tour constitutes an examination or course within the meaning of the ADA are issues that I defer until the trial of the case.

CONCLUSION

For the reasons stated above, defendant's motion (# 20) for summary judgment is denied. Plaintiff's motion (# 44) for partial summary judgment is granted as to the issue of whether defendant is exempt from the ADA and whether defendant operates a place of public accommodation, and is otherwise denied.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Case No. 97-6309-TC

CASEY MARTIN,

Plaintiff,

v.

PGA TOUR, INC., a MARYLAND CORPORATION,

Defendant.

JUDGMENT AND PERMANENT INJUNCTION

The Court having presided at trial in this matter, without a jury, and having found in favor of Plaintiff and against Defendant and having thereafter entered Findings of Fact and Conclusions of Law in an order dated February 19, 1998, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Judgment is entered in favor of Plaintiff Casey Martin, and against Defendant PGA TOUR, Inc. (PGA TOUR) on Count One of Plaintiff's Amended Complaint alleging that the PGA TOUR is a place of public accommodation and that it discriminated against Plaintiff in violation of Title III of the Americans with Disabilities Act, 42 USC § 12101, *et. seq.* (the "ADA") by failing to provide him with automotive transportation in competitions in which Plaintiff is eligible to participate. Judgment is entered in favor of PGA TOUR, and against Plaintiff Casey Martin, on Count Two of Plaintiff's Amended Complaint alleging that the NIKE TOUR constitutes a "course and examination" under Title III of the ADA, and judgment also is entered in favor of PGA TOUR, and against Plaintiff Casey Martin, on Count Three of

Plaintiff's Amended Complaint alleging that Plaintiff is an "employee" of the PGA TOUR and that the PGA TOUR discriminated against Plaintiff because of his disability in violation of Title I of the ADA.

2. The Court hereby enters a Permanent Injunction requiring Defendant PGA TOUR to provide Plaintiff with automotive transportation in NIKE TOUR and PGA TOUR competitions in which Plaintiff is eligible to participate (and any qualifying, preliminary or practice rounds associated with these events).

3. Automotive transportation shall be subject to the terms and conditions agreed upon by the parties. In the event the parties are unable to arrive at an agreement, the Court shall retain continuing jurisdiction to resolve any dispute in this regard between the parties.

4. Plaintiff may file an application for his reasonable costs and attorney fees for the services provided by William Wiswall and the law firm of Wiswall & Walsh, P.C. and by Walters, Romm, Chanti & Dickens, P.C. pursuant to Fed. R. Civ. P. 54.

5. There is no just reason for delay and entry of this Judgment shall be made forthwith.

DATED this 4th day of March 1998.

/s/ Thomas M. Coffin
THOMAS M. COFFIN
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Case No. 97-6309-TC

CASEY MARTIN,

Plaintiff,

vs.

PGA TOUR, INC., a MARYLAND Corporation,

Defendant.

I.

Amended Complaint

Americans with Disabilities Act of 1990, 42 USC § 12101 *et seq*. DEMAND FOR JURY TRIAL

NATURE OF THE ACTION

1.

Plaintiff seeks preliminary and permanent injunctive relief and costs and attorney fees for discrimination on the basis of disability.

2.

This action arises under the Americans With Disabilities Act of 1990 (hereinafter the ADA), 42 USC § 12101 *et. seq*.

II.

JURISDICTIONAL ALLEGATIONS

3.

This court has jurisdiction pursuant to 28 U.S.C. § 1331, 1343 and the ADA.

4.

Preliminary and permanent injunctive relief are sought pursuant to the ADA.

5.

Costs and attorney fees may be awarded pursuant to the ADA.

III.

PARTIES

6.

Plaintiff is a citizen of the United States and the state of Oregon, residing in Lane County, Oregon.

7.

At all material times Defendant PGA TOUR, Inc., hereinafter referred to as Defendant, is and was a Maryland corporation, duly organized under the laws of the State of Maryland, doing business throughout the United States and in Oregon.

IV.

STATEMENT OF FACTS.

8.

At all material times Plaintiff had and has a "disability" as defined by the ADA, 42 USC § 12102(2), in that Plaintiff had and has a physical impairment that substantially limits one or more of his major life activities. Plaintiff has Klippel-Treanaunay Weber syndrome which substantially limits his ability to walk.

9.

In September, 1997 Plaintiff applied to enter the 1997 PGA TOUR Qualifying Tournament and was accepted. Plaintiff paid the sum of $3,000 as an application fee. Plaintiff successfully participated in the first and second qualifying stages of the PGA TOUR Qualifying Tournament and qualified to compete in the Final Qualifying Stage.

10

The PGA TOUR and the NIKE TOUR are professional golf tours. Plaintiff was prohibited from entering these tours and from earning compensation and benefits from these tours unless he successfully competed in the PGA TOUR, Inc. Qualifying Tournament, or unless he met other requirements not available to Plaintiff.

11.

The Final Qualifying Stage of the 1997 PGA TOUR Inc., Qualifying Tournament began on December 3, 1997. Defendant's rules prohibited the use of golf carts during the Final Qualifying Stage.

12.

The Court entered a preliminary injunction requiring Defendant to permit Plaintiff to use a golf cart in the Final Qualifying Stage of the 1997 PGA Qualifying Tour.

13.

Plaintiff successfully completed the Final Qualifying Stage of the 1997 PGA Qualifying Tour, qualified to participate in the 1998 NIKE TOUR and was offered and accepted a position on the NIKE TOUR. Defendant prohibits the use of a golf cart in NIKE and PGA TOUR events. Because of his disability, Plaintiff cannot effectively compete in the NIKE TOUR or the PGA TOUR or obtain compensation, benefits, privileges or advantages from the NIKE TOUR or the PGA TOUR unless he is permitted to use a golf cart in NIKE or PGA TOUR events.

FIRST CLAIM FOR RELIEF
Count One
(Public Accommodation Discrimination)

14.

Plaintiff incorporates paragraphs 1 through 13 by reference as if fully set forth herein.

15.

At all times material herein, Defendant is and has been a private entity which is a public accommodation or which owns, leases or operates a place of public accommodation as those terms are used in the ADA, 42 USC § 12181.

16.

By prohibiting the use of a golf cart in NIKE and PGA TOUR events, Defendant has subjected Plaintiff directly or through contractual, licensing or other arrangements to a denial of the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages or accommodations of an entity.

17.

The use of a golf cart is necessary to provide Plaintiff with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others on the NIKE and PGA TOURS

18.

By prohibiting the use of a golf cart Defendant has directly or through contractual or other arrangements, utilized standards or criteria or methods of administration that have the effect of discriminating on the basis of disability.

19.

By prohibiting the use of a golf cart Defendant has imposed or applied eligibility criteria that screen out or tend

to screen out an individual with a disability from fully and equally enjoying goods, services, facilities, privileges, advantages or accommodations.

20.

Plaintiff has requested that Defendant modify its polices, practices or procedures to permit him to use a golf cart because the use of a golf cart is necessary to afford Plaintiff the benefit of goods, services, facilities, privileges advantages or accommodations. Defendant has failed to make reasonable modifications in its policies, practices or procedures.

21.

Defendant has failed to take such steps as may be necessary to ensure that Plaintiff is not excluded from participation in the NIKE and PGA TOURs because of the absence of auxiliary aids and services.

FIRST CLAIM FOR RELIEF
Count Two
(Professional Advancement)

22.

Plaintiff incorporates paragraphs 1 through 13 by reference as if fully set forth herein.

23.

At all times material herein Defendant PGA TOUR, Inc. is and has been a private entity that offers examinations or courses related to applications, licensing, certification, or credentialing for professional or trade purposes as those terms are used in the ADA, 42 USC § 12189.

24.

The NIKE TOUR constitutes an examination or course related to application, licensing, certification or credentialing for participation in the PGA TOUR and other professional or

trade purposes. By prohibiting the use of a cart in NIKE TOUR events, Defendant has failed to offer the NIKE TOUR in a place and manner accessible to Plaintiff.

FIRST CLAIM FOR RELIEF
Count Three
(Employment Discrimination)

25.

At all times material herein Defendant PGA TOUR, Inc. is and has been a covered entity as that term is used in the ADA, 42 USC 12111(2).

26.

At all times material herein Plaintiff is and has been a qualified individual with a disability as that term is defined in the ADA, 42 USC § 12111(8)

27.

By prohibiting Plaintiff from using a golf cart, Defendant has discriminated against him because of his disability in regard to job application procedures, hiring, advancement, employment compensation, job training and other terms, conditions and privileges of employment. This discrimination includes but is not limited to the following:

a) limiting Plaintiff in a way that adversely affects the opportunities or status of Plaintiff as an applicant or employee because of his disability;

b) participating in a contractual or other arrangement or relationship that has the effect of subjecting Plaintiff to prohibited discrimination;

c) utilizing standards, criteria, or methods of administration that have the effect of discrimination on the basis of disability or that perpetuate the discrimination of others who are subject to common administrative control;

d) not making reasonable accommodations to the known physical limitations of Plaintiff;

e) denying employment opportunities to Plaintiff based on the need to make reasonable accommodation to the physical impairments of Plaintiff;

f) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out Plaintiff;

g) failing to administer tests concerning employment in the most effective manner to ensure that test results accurately reflect the skills, aptitude or other factors that the test purports to measure rather than reflecting the impaired skills of Plaintiff.

FIRST CLAIM FOR RELIEF

RELIEF REQUESTED

28.

Plaintiff is entitled to a preliminary and permanent injunction requiring Defendant to permit him to use a golf cart in the PGA QUALIFYING TOUR, the NIKE TOUR and the PGA TOUR.

29.

Plaintiff is entitled to recover his reasonable attorney fees, including litigation expenses and costs incurred in this action.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. For preliminary and permanent injunctive relief requiring Defendant to permit Plaintiff to use a golf cart to participate in the PGA TOUR QUALIFYING TOURNAMENT, the PGA TOUR and the NIKE TOUR.

2. For his reasonable costs and attorney fees incurred in this action.

3. For such other and further relief as the Court may deem just and equitable.

DATED this 19 day of December, 1997.

WALTERS ROMM CHANTI &
DICKENS, P.C.

By: /s/ Illegible
Martha Lee Walters, OSB #77315
William Wiswall, OSB #62101
Trial Attorneys Of Attorneys for
Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

No. 97-6309-TC

CASEY MARTIN,

Plaintiff,

vs.

PGA TOUR, INC., a Maryland corporation,

Defendant.

DEFENDANT'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT

For its Answer to Plaintiff's Amended Complaint ("Complaint"), Defendant PGA TOUR, Inc., hereby admits, denies and alleges as follows:

1. Defendant admits that the Complaint seeks preliminary and permanent injunctive relief, and costs and attorneys' fees, but Defendant denies that there is any basis for such relief and Defendant further denies that there has been any discrimination on the basis of disability or otherwise.

2. Defendant admits that Plaintiff purports to bring this action under 42 U.S.C. § 12101 *et seq*, but Defendant denies that this action properly arises under those statutes.

3. Defendant denies that this Court has jurisdiction over this claim for the reason that Defendant is not subject to the ADA.

4. Defendant denies that Plaintiff has any basis for preliminary or permanent injunctive relief under the ADA in this action.

5. Defendant denies that Plaintiff is entitled to recover costs and attorneys' fees in this action as alleged or at all.

6. Defendant is without sufficient information to form a belief as to the truth of the allegations of Paragraph 6 of the Complaint, and therefore neither admits nor denies those allegations.

7. Answering Paragraph 7 of the Complaint, Defendant admits that it is a Maryland not-for-profit corporation duly organized under the laws of the State of Maryland, but Defendant denies that it is doing business throughout the United States and denies that it does sufficient business in Oregon to warrant the exercise of personal jurisdiction over Defendant by this Court.

8. Defendant is without sufficient information to form a belief as to the truth of the allegations of Paragraph 8 of the Complaint, and therefore neither admits nor denies those allegations.

9. Defendant admits the allegations of Paragraph 9 of the Complaint.

10. Defendant admits the allegations of Paragraph 10 of the Complaint, except the use of the term "prohibited."

11. Defendant admits the allegations of Paragraph 11 of the Complaint.

12. Defendant admits the allegations of Paragraph 12 of the Complaint.

13. Defendant admits the allegations of the first two sentences of Paragraph 13 of the Complaint, but is without sufficient information to form a belief as to the truth of the remaining allegations of such Paragraph.

14. Answering Paragraph 14 of the Complaint, Defendant incorporates herein each of the admissions, denials and allegations of Paragraphs 1 through 13 above.

15. Answering Paragraph 15 of the Complaint, Defendant admits that it is a private entity, but Defendant denies the remaining allegations of Paragraph 15.

16. Defendant denies the allegations of Paragraph 16 of the Complaint.

17. Defendant denies the allegations of Paragraph 17 of the Complaint.

18. Defendant denies the allegations of Paragraph 18 of the Complaint.

19. Defendant denies the allegations of Paragraph 19 of the Complaint.

20. Answering Paragraph 20 of the Complaint, Defendant admits that Plaintiff has requested that Defendant change its rules and Defendant has refused. Defendant denies the remainder of Paragraph 20.

21. Defendant denies the allegations of Paragraph 21 of the Complaint.

22. Answering Paragraph 22 of the Complaint, Defendant incorporates herein the admissions, denials and allegations of Paragraphs 1 through 21 above.

23. Answering Paragraph 23 of the Complaint, Defendant admits that it is a private entity, but Defendant denies the remaining allegations of Paragraph 23.

24. Defendant denies the allegations of Paragraph 24 of the Complaint.

25. Defendant denies the allegations of Paragraph 25 of the Complaint.

26. Defendant is without sufficient information to form a belief as to the truth of the allegations of Paragraph 26 of the Complaint, and therefore neither admits nor denies such allegations.

27. Defendant denies the allegations of Paragraph 27 of the Complaint, including each of the seven subparts of Paragraph 27 of the Complaint.

28. Defendant denies the allegations of Paragraph 28 of the Complaint.

29. Defendant denies the allegations of Paragraph 29 of the Complaint.

30. For its first affirmative defense, Defendant alleges that Plaintiffs Complaint fails to state a claim upon which relief can be granted.

31. For its second affirmative defense, Defendant alleges that this Court lacks personal jurisdiction and venue over Defendant because Defendant is not present or otherwise found within this District and because none of the events or omissions giving rise to Plaintiff's claim occurred within this District.

32. For its third affirmative defense, Defendant alleges that this Court lacks subject matter jurisdiction because Defendant is not a "public accommodation" within the meaning of the ADA.

33. For its fourth affirmative defense, Defendant alleges that Plaintiff is estopped to assert the claims of its Complaint and has waived any such claims by agreeing to abide by the rules and regulations of PGA TOUR as they relate to the Qualifying Tournament, the NIKE TOUR, and the PGA TOUR itself.

34. For its fifth affirmative defense, Defendant alleges that Plaintiff's claims under the ADA are barred by the fact that the relief sought by Plaintiff would fundamentally alter the nature of the competition which is sponsored by PGA TOUR, including competition on the NIKE TOUR.

35. For its sixth affirmative defense, Defendant alleges that Plaintiffs claims are barred because the relief sought by

Plaintiff would irreparably harm Defendant and because the balance of hardships tips decidedly in favor of Defendant.

DATED this 24 day of December, 1997.

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SCOTT W. RODGERS
OSBORN MALEDON, P.A.
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Portland, Oregon 97204-1357
Attorneys for Defendant PGA TOUR

By /s/ George Cooper

Logo [USGA]

Section II

DEFINITIONS

* * * *

Rule

The term "Rule" includes Local Rules made by the Committee under Rule 33-8a.

* * * *

Section III

THE RULES OF PLAY

THE GAME

Rule 1. The Game

1-1. General

The Game of Golf consists in playing a ball from the teeing ground into the hole by a stroke or successive strokes in accordance with the rules.

1-2. Exerting Influence on Ball

No Player or caddie shall take any action to influence the position or the movement of the a ball except in accordance with the Rules.

PENALTY FOR BREACH OF RULE 1-2:
Match Play—Loss of hole; Stroke play—Two strokes.

Note: In the case of a serious breach of Rule 1-2, the Committee may impose a penalty of disqualification.

1-3. Agreement to Waive Rules

Players shall not agree to exclude the operation of any Rule or to waive any penalty incurred.

* * * *

4-4. Maximum of Fourteen Clubs

a. SELECTION AND REPLACEMENT OF CLUBS

The player shall start a stipulated round with not more than fourteen clubs. He is limited to the clubs thus selected for that round except that, without unduly delaying play, he may:

(i) if he started with fewer than fourteen clubs, add any number provided his total number does not exceed fourteen; and

(ii) replace, with any club, a club which becomes unfit for play in the normal course of play.

The addition or replacement of a club or clubs may not be made by borrowing any club selected for play by any other person playing on the course.

b. PARTNERS MAY SHARE CLUBS

Partners may share clubs, provided that the total number of clubs carried by the partners so sharing does not exceed fourteen.

PENALTY FOR BREACH OF RULE 4-4a or b.
REGARDLESS OF NUMBER OF EXCESS CLUBS CARRIED:

Match play – At the conclusion of the hole at which the breach is discovered, the state of the match shall be adjusted by deducting one hole for each hole at which a breach occurred. Maximum deduction per round: two holes.

Stroke play – Two strokes for each hole at which any breach occurred; maximum penalty per round: four strokes.

Bogey and par competitions- Penalties as in match play.

Stableford competitions- see Note to Rule 32-1b

c. EXCESS CLUB DECLARED OUT OF PLAY

Any club carried or used in breach of this Rule shall be declared out of play by the player immediately upon discovery that a breach has occurred and there after shall not be used by the player during the round.

PENALTY FOR BREACH OF RULE 4-4c: *Disqualification.*

Rule 5. The Ball

5-1. General

The ball the player uses shall conform to requirements specified in Appendix III on maximum weight, minimum size, spherical symmetry, initial velocity and overall distance.

Note: The Committee may require, in the conditions of a competition (Rule 33-1), that the ball the player uses must be named on the current List of Conforming Golf Balls issued by the United States Golf Association.

5-2. Foreign Material

Foreign material must not be applied to a ball for the purpose of changing its playing characteristics.

PENALTY FOR BREACH OF RULE 5-1 or 5-2:
Disqualification.

5-3. Ball Unfit for Play

A ball is unfit for play if it is visibly cut, cracked or out of shape. A ball is not unfit for play solely because mud or other materials adhere to it, its surface is scratched or scraped or its paint is damaged or discolored.

If a player has reason to believe his ball has become unfit for play during the play of the hole being played, he may during the play of such hole lift his ball without penalty to determine whether it is unfit.

Before lifting the ball, the player must announce his intention to his opponent in match play or his marker or a

fellow-competitor in stroke play and mark the position of the ball. He may then lift and examine the ball without cleaning it and must give his opponent, marker or fellow- competitor an opportunity to examine the ball.

If he fails to comply with this procedure, *he shall incur a penalty of one stroke.*

If it is determined that the ball has become unfit for play during play of the hole being played, the player may substitute another ball, placing it on the spot where the original ball lay. Otherwise, the original ball shall be replaced.

* * * *

ADMINISTRATION

Rule 33. The Committee

33-1. Conditions; Waiving Rule

The Committee shall lay down the conditions under which a competition is to be played.

The Committee has no power to waive a Rule of Golf.

Certain special rules governing stroke play are so substantially different from those governing match play that combining the two forms of play is not practicable and is not permitted. The results of matches played and the scores returned in these circumstances shall not be accepted.

In stroke play the Committee may limit a referee's duties.

33-2 The Course

a. DEFINING BOUNDS AND MARGINS

The Committee shall define accurately:

(i) the course and out of bounds,

(ii) the margins of water hazards and lateral water hazards,

(iii) ground under repair, and

(iv) obstructions and integral parts of the course.

b. NEW HOLES

New holes should be made on the day on which a stroke competition begins and at such other times as the Committee considers necessary, provided all competitors in a single round play with each hole cut in the same position.

Exception: When it is impossible for a damaged hole to be repaired so that it conforms with the Definition, the Committee may make a new hole in a nearby similar position.

Note: Where a single round is to be played on more than one day, the Committee may provide in the conditions of a competition that the holes and teeing grounds may be differently situated on each day of the competition, provided that, on any one day, all competitors play with each hole and each teeing ground in the same position.

c. PRACTICE GROUND

Where there is no pratice ground available outside the area of a competition course, the Committee should lay down the area on which players may practice on any day of a competition, if it is practicable to do so. On any day of a stroke competition, the Committee should not normally permit practice on or to a putting green or from a hazard of the competition course.

d. COURSE UNPLAYABLE

If the Committtee or its authorized representative considers that for any reason the course is not in a playable condition or that there are circumstances which render the proper playing of the game impossible, it may, in match play or stroke play, order a temporary suspension of play or, in stroke play, declare play null and void and cancel all scores for the round in question. When play has been temporarily suspended, it shall be resumed from where it was discontinued, even though resumption occurs on a subsequent day. When a round

is cancelled, all penalties incurred in that round are cancelled.

(Procedure in discontinuing play — see Rule 6-8.)

* * * *

33-8. Local Rules

a. POLICY

The Committee may make and publish Local Rules for abnormal conditions if they are consistent with the policy of the Governing Authority for the country concerned as set forth in Appendix I to these Rules.

b. Waiving Penalty

A penalty imposed by a Rule of Golf shall not be waived by a Local Rule.

* * * *

Appendix I

LOCAL RULES; CONDITIONS OF THE COMPETITION

Local Rules

Rule 33-8 provides:

"The Committee may make and publish Local Rules for abnormal conditions if they are consistent with the policy of the Governing Authority for the country concerned as set forth in Appendix I to these Rules.

"A penalty imposed by a Rule of Golf shall not be waived by a Local Rule."

Information regarding acceptable and prohibited Local Rules is provided in the *Decisions on the Rules of Golf* under Rule 33-8. Among the matters for which Local Rules may be advisable are following:

1. Obstructions

Clarifying the status of objects which may be obstructions (Rule 24).

Declaring any construction to be an integral part of the course and, accordingly, not an obstruction, e.g., built-up sides of teeing grounds, putting greens and bunkers (Rules 24 and 33-2a).

2. Roads and Paths

Providing relief of the type afforded under Rule 24-2b from roads and paths not having artificial surfaces and sides if they could unfairly affect play.

3. Preservation of Course

Preservation of the course by defining areas, including turf nurseries and other parts of the course under cultivation, as ground under repair from which play is prohibited.

4. Water Hazards

Lateral Water Hazards. Clarifying the status of sections of water hazards which may be lateral water hazards(Rule 26).

Provisional Ball. Permitting play of a provisional ball for a ball which may be a water hazard of such character that it would be impracticable to determine whether the ball is in the hazard or to do so would unduly delay play. In such case, if a provisional ball is played and the original ball is in a water hazard, the player may play the original ball as it lies or continue the provisional ball in play, but he may not proceed under Rule 26-1.

5. Defining Bounds and Margins

Specifying means used to define out of bounds, hazards, water hazards, lateral water hazards and ground under repair.

6. Ball Drops

Establishment of special areas on which balls may be dropped when it is not feasible or practicable to proceed exactly in conformity with Rule 24-2b (immovable obstructions), Rule 25-1b or 1c (ground under repair), Rule

26-1(water hazards and lateral water hazards) and Rule 28 (ball unplayable).

7. Temporary Conditions—Mud, Extreme Wetness

Temporary conditions which might interfere with proper playing of the game, including mud and extreme wetness warranting lifting an embedded ball anywhere through the green (see detailed recommendation below) or removal of mud from a ball through the green.

* * *

Following are the suggested texts for other Local Rules which are authorized by the USGA:

Lifting an Embedded Ball

Rule 25-2 provides relief without penalty for a ball embedded in its own pitch-mark in any closely mown area through the green.

On the putting green, a ball may be lifted and damage caused by the impact of a ball may be repaired (Rules 16-1b and c).

When permission to lift an embedded ball anywhere through the green would be warranted, the following Local Rule is suggested:

> Anywhere "through the green," a ball which is embedded in its own pitch-mark in the ground, except in loose sand, may be lifted without penalty, cleaned and dropped as near as possible to the spot where it lay but not nearer the hole. (See Rule 20.) The ball when dropped must first strike a part of the course through the green.
>
> ("Through the green" is the whole area of the course except:
>
> a. The teeing ground and putting green of the hole being played;
>
> b. All hazards on the course.)

Exception: A player may not obtain relief under this Rule if it is clearly unreasonable for him to play a stroke because of interference by anything other than the condition covered by this Rule.

Practice Between Holes

When, between the play of two holes, it is desired to prohibit practice putting or chipping on or near the putting green of the hole last played, the following Local Rule is recommended:

> Between the play of two holes, a player shall not play any practice stroke on or near the putting green of the hole last played. (For other practice, see Rules 7 and 33-2c.)

PENALTY FOR BREACH OF LOCAL RULE:

Match play—Loss of next hole; Stroke play–Two strokes at next hole.

Marking Position of Lifted Ball

When it is desired to require a specific means of marking the position of a lifted ball on the putting green, the following Local Rule is recommended:

> Before a ball on the putting green is lifted, its position shall be marked by placing a small coin or some similar object immediately behind the ball; if the ball-marker interferes with another player, it should be moved one or more putterhead-lengths to one side. If the position of the ball is not so marked *the player shall incur a penalty of one stroke* and the ball shall be replaced. If the ball is not replaced, *the player shall incur the penalty* for breach of Rule 20-3a, but no additional penalty under this Local Rule shall be applied. (This modifies Rule 20-1.)

Prohibition Against Touching Line of Putt with Club

When it is desired to prohibit touching the line of putt with a club in moving loose impediments, the following Local Rule is recommended:

> The line of putt shall not be touched with a club for any purpose except to repair old hole plugs or ball marks or during address. (This modifies Rule 16-1a.)

PENALTY FOR BREACH OF LOCAL RULE:

Match play—Loss of hole; Stroke play—Two strokes.

Protection of Young Trees

When it is desired to prevent damage to young trees, the following Local Rule is recommended:

> Protection of young trees indentified by____—If such a tree interferes with a player's stance or the area of his intended swing, the ball must be lifted, without penalty, and dropped in accordance with the procedure prescribed in Rule 24-2b (Immovable Obstruction). If the ball is in a water hazard, the player shall lift and drop the ball in accordance with Rule 24-2b(i) except that the ball must be dropped in the water hazard or the player may proceed under Rule 26-1, if applicable. The ball may be cleaned when so lifted.

Exception: A player may not obtain relief under this Rule if (a) it is clearly unreasonable for him to play a stroke because of interference by anything other than such tree, or (b) interference by such tree would occur only through use of an unnecessarily abnormal stance, swing or direction of play.

Environmentally-Sensitive Areas

When the Committee is required to prohibit play from environmentally-sensitive areas which are on or adjoin the course, the following Local Rule is recommended:

1. Definition

An environmentally-sensitive area is an area so declared by an appropriate authority, entry into and/or play from which is prohibited for environmental reasons. Such an area may be defined as ground under repair, a water hazard, a lateral water hazard or out of bounds at the discretion of the Committee provided that, in the case of an environmentally-sensitive area which has been defined as a water hazard or a lateral water hazard, the area is, by Definition, a water hazard.

Note: The Committee may not declare an area to be environmentally-senstitive.

2. Ball in Environmentally-Sensitive Area

(a) GROUND UNDER REPAIR

If a ball is in an environmentally-sensitive area which is defined as ground under repair, a ball must be dropped in accordance with Rule 25-1b.

If there is reasonable evidence that a ball is lost within an environmentally-sensitive area which is defined as ground under repair, the player may take relief without penalty as prescribed in Rule 25-1c.

(b) WATER HAZARDS AND LATERAL WATER HAZARDS

If a ball is in or there in reasonable evidence that it is lost in an environmentally-sensitive area which is defined as a water hazard or a lateral water hazard, the player must, under penalty of one stroke, proceed under Rule 26-1

Note: If a ball dropped in accordance with Rule 26 rolls into a position where the environmentally-sensitive area interferes with the player's stance or the area of his intended swing, the player must take relief as provided in Clause 3 of this Local Rule.

(c) OUT OF BOUNDS

If a ball is in an environmentally-sensitive area which is defined as out of bounds, the player shall play a ball, under penalty of one stroke, as nearly as possible at the spot from which the original ball was last played (see Rule 20-5).

3. Interference with Stance or Area of Intended Swing

Interference by an environmentally-sensitive area occurs when such a condition interferes with the player's stance or the area of his intended swing. If interference exists, the player must take relief as follows:

(i) Through the Green: If the ball lies through the green, the point on the course nearest to where the ball lies shall be determined which (a) is not nearer the hole, (b) avoids interference by the condition and (c) is not in a hazard or on a putting green. The player shall lift the ball and drop it without penalty within on club-length of the point thus determined on a part of the course which fulfils (a), (b) and (c) above.

(ii) In a Hazard: If the ball is in a hazard, the player shall lift the ball and drop it either:

(a) Without penalty, in the hazard, as near as possible to the spot where the ball lay, but not nearer the hole, on a part of the course which provides complete relief from the condition;

or

(b) Under penalty of one stroke, outside the hazard, keeping the point where the ball lay directly between the hole and the spot on which the ball is dropped, with no limit to how far behind the hazard the ball may be dropped. Additionally, the player may proceed under Rule 26 or 28 if applicable.

(iii) On the putting green: If the ball lies on the putting green, the player shall lift the ball and place it without penalty in the nearest position to where it lay which affords complete relief from the condition, but not nearer the hole or in a hazard.

The ball may be cleaned when so lifted under Clause 3 of this Local Rule.

Exception: A player may not obtain relief under Clause 3 of this Local Rule if (a) it is clearly unreasonable for him to play a stroke because of interference by anything other than a condition covered by this Local Rule or (b) interference by such a condition would occur only through use of an unnecessarily abnormal stance, swing or direction of play.

4. Re-Dropping

If a dropped ball rolls into a position covered by this Local Rule or a position covered by 20-2c, it shall be re-dropped without penalty. If the ball when re-dropped rolls into such a position, it shall be placed as near as possible to the spot where it first struck a part of the course when re-dropped.

Exception: A ball dropped under Clause 2(b) of this local rule shall not be re-dropped if the environmentally-sensitive area interferes with the player's stance or the area of his intended swing. The player must take relief as provided in Clause 3 of this Local Rule.

PENALTY FOR BREACH OF RULE:
Match play—Loss of hole; Stroke play—Two strokes.

Note: In the case of a serious breach of this Local Rule, the Committee may impose a penalty of disqualification.

Temporary Power Lines and Cables

When temporary power lines, cables or telephone lines are installed on the course, the following Local Rule is recommended:

Temporary power lines, cables, telephone lines and mats covering or stanchions supporting them are obstructions:

1. If they are readily movable, Rule 24-1 applies.

2. If they are fixed or not readily movable, the player may, if the ball lies though the green or in a bunker, obtain relief as provided in Rule 24-2b. If the ball lies in a water hazard, the player may obtain relief under Rule 24-2b(i) except that the ball must be dropped in the water hazard.

Note: The Prohibition in Rule 24-2 against crossing over, through or under the obstruction does not apply.

3. If a ball strikes an elevated power line or cable, the stroke shall be cancelled and replayed, without penalty (see Rule 20-5). If the ball is not immediately recoverable another ball may be substituted.

Note: Guy wires supporting a temporary immovable obstruction are part of the temporary immovable obstruction unless the Committee, by Local Rule, declares that they are to be treated as elevated power lines or cables.

Exception: Ball striking elevated junction section of cable rising from the ground shall not be replayed.

4. Grass-covered cable trenches are ground under repair and Rule 25-1b applies.

Temporary Immovable Obstructions

When temporary obstructions are installed on or adjoining the course, the Committee should define the status of such obstructions as either movable, immovable or temporary immovable obstructions. If the Committee defines such obstructions as temporary immovable obstructions, the following Local Rule is recommended:

1. Definition

A temporary immovable obstruction is a non-permanent artificial object which is often erected in conjunction with a competition and which is fixed or not readily movable.

Examples of temporary immovable obstructions include, but are not limited to, tents, scoreboards, grandstands, television towers and lavatories.

Supporting guy wires are part of the temporary immoyable obstruction unless the Committee declares that they are to be treated as elevated power lines or cables.

2. Interference

Interference by a temporary immovable obstruction occurs when (a) the ball lies in front of and so close to the obstruction that the obstruction interferes with the player's stance or the area of his intended swing, or (b) the ball lies in, on, under or behind the obstruction so that any part of the obstruction intervenes directly between the player's ball and the hole; interference also exists if the ball lies within one club-length of a spot where such intervention would exist.

Note: A ball is under a temporary immovable obstruction when it is below the outer most edges of the obstruction, even if these edges do not extend downwards to the ground.

3. Relief

A player may obtain relief from interference by a temporary immovable obstruction, including a temporary immovable obstruction which is out of bounds, as follows:

a. THROUGH THE GREEN

If the ball lies through the green, the point on the course nearest to where the ball lies shall be determined which (a) is not nearer the hole, (b) avoids interference as defined in Clause 2 and (c) is not in a hazard or on a putting green. The

player shall lift the ball and drop it without penalty within one club-length of the point thus determined on a part of the course which fulfils (a), (b) and (c) above.

b. IN A HAZARD

If the ball is in a hazard, the player shall lift and drop the ball either:

(i) Without penalty, in the hazard, on the nearest part of the course affording complete relief within the limits specified in Clause 3a above or, if complete relief is impossible, on a part of the course within the hazard which affords maximum available relief; or

(ii) *Under penalty of one stroke,* outside the hazard as follows: the point of the course nearest to where the ball lies shall be determined which (a) is not nearer the hole, (b) avoids interference as defined in Clause 2 and (c) is not in a hazard. The player shall drop the ball within one club-length of the point thus determined on a part of the course which fulfils (a), (b) and (c) above.

Note: If the ball lies in a hazard, nothing in this Local Rule precludes the player from proceeding under Rule 26 or Rule 28, if applicable.

The ball may be cleaned when lifted under Clause 3.

Exceptions: A player may not obtain relief under Clause 3 if:

1. It is clearly unreasonable for him to play a stroke or, in the care of intervention, to play a stroke directly towards the hole, because of interference by anything other then the temporary immovable obstruction;

2. Interference by the temporary immovable obstruction would occur only through use of an unneccessarily abnormal stance, swing or direction of play; or

3. In the case of intervention, it would be clearly unreasonable to expect the player to be able to strike the ball far enough towards the hole to reach the temporary immovable obstruction.

Note: A Committee may make a Local Rule (a) permitting or requiring a player to use a dropping zone or ball drop when taking relief from a temporary immovable obstruction or (b) permitting a player, as an additional relief option, to drop the ball on the opposite side of the obstruction from the point established under Clause 3, but otherwise in accordance with Clause 3.

4. Ball Lost

If there is reasonable evidence that the ball is lost in, on or under a temporary immovable obstruction, a ball may be dropped under the provisions of Clause 3 or Clause 5, if applicable. For the purpose of applying Clauses 3 and 5, the ball shall be deemed to lie at the spot where it entered the obstruction (Rule 24-2c).

5. Dropping Zones (Ball Drops)

If the player has interference from a temporary immovable obstruction, the Committee may permit or require the use of a dropping zone or ball drop. If the player uses a dropping zone in taking relief, he must drop the ball in the dropping zone nearest to which his ball originally lay or is deemed to lie under Clause 4 (even thought the nearest dropping zone may be nearer the hole).

Note: A Committee may make a Local Rule prohibiting the use of a dropping zone or ball drop which is nearer the hole.

6. Re-Dropping

If a dropped ball rolls into a position covered by this Local Rule or a position covered by Rule 20-2c, it shall * * * *

* * * *

UPPER HALF	LOWER HALF	UPPER HALF	LOWER HALF
64 QUALIFIERS		32 QUALIFIERS	
1 vs. 64	2 vs. 63	1 vs. 32	2 vs. 31
32 vs. 33	31 vs. 34	16 vs. 17	15 vs. 18
16 vs. 49	15 vs. 50	8 vs. 25	7 vs. 26
17 vs. 48	18 vs. 47	9 vs. 24	10 vs. 23
8 vs. 57	7 vs. 58	4 vs. 29	3 vs. 30
25 vs. 40	26 vs. 39	13 vs. 20	14 vs. 19
9 vs. 56	10 vs. 55	5 vs. 28	6 vs. 27
24 vs. 41	23 vs. 42	12 vs. 21	11 vs. 22
4 vs. 61	3 vs. 62	16 QUALIFIERS	
29 vs. 36	30 vs. 35	1 vs. 16	2 vs. 15
13 vs. 52	14 vs. 51	8 vs. 9	7 vs. 10
20 vs. 45	19 vs. 46	4 vs. 13	3 vs. 14
5 vs. 60	6 vs. 59	5 vs. 12	6 vs. 11
28 vs. 37	27 vs. 38	8 QUALIFIERS	
12 vs. 53	11 vs. 54	1 vs. 8	2 vs. 7
21 vs. 44	22 vs. 43	4 vs. 5	3 vs. 6

Handicap Allowances

The USGA recommends the following handicap allowances in handicap competitions:

Singles match play: Allow the higher-handicapped player the full difference between the handicaps of the two players.

Four-ball match play: Reduce the handicaps of all four players by the handicap of the low-handicapped player, who shall then play from scratch. Allow each of the three other players 100 percent of the resulting difference.

Individual stroke play: Allow the full handicap.

Four-ball stroke play: Men —Allow each competitor 90 percent of his handicap. Women—Allow each competitor 95 percent of her handicap.

Best-ball-of-four; stroke play: Men—Allow each competitor 80 percent of his handicap. Women—Allow each competitor 90 percent of her handicap.

Optional Conditions

The following are some conditions which a Committee may wish to make:

List of Conforming Golf Balls

The USGA periodically issues a List of Conforming Golf Balls. If it is desired to require use of a brand of golf ball on the List, the List should be posted and the following issued as a condition of the competition:

> Only brands of golf balls on the USGA's latest List of Conforming Golf Balls may be used. Penalty for use of brand not on the List: Disqualification.

One Ball Rule

If it is desired to prohibit changing brands of golf balls during a stipulated round, the following condition is recommended; it is suggested that it be considered only for competitions involving expert players:

Limitation on Golf Balls Used During Round

(Condition: Rules 5-1 and 33-1)

1. BALLS WITH IDENTICAL MARKINGS TO BE USED

During a stipulated round, the balls a player uses must be of the same brand and type as detailed by a single entry on the current list of Conforming Golf Balls.

PENALTY FOR BREACH OF CONDITION:

Match play—At the conclusion of the hole at which the breach is discovered, the state of the match shall be adjusted by deducting one hole for each hole at which a breach occurred. Maximum deduction per round: two holes. Stroke play — Two strokes for each hole at which any breach occurred; maximum penalty per round: four strokes.

2. PROCEDURE WHEN BREACH DISCOVERED

When a player discovers that he has used a ball in breach of this condition, he shall abandon that ball before playing from the next teeing ground and complete the round using a proper ball; otherwise, *the player shall be disqualified*. If discovery is made during play of a hole and the player elects to substitute a proper ball before completing that hole, the player shall place a proper ball on the spot where the ball used in breach of this condition lay.

Time of starting

If the Committee desires to adopt the condition in the Note under Rule 6-3a, the following wording is recommended:

> Rule 6-3a provides, "The player shall start at the time laid down by the Committee." The penalty for breach of Rule 6-3a is disqualification. However, it is a condition of the competition that, if the player arrives at his starting point, ready to play, within five minutes after his starting time, in the absence of circumstances which warrant waiving the penalty of disqualification as provided in Rule 33-7, the penalty for failure to start on

time is loss of the first hole in match play or two strokes at the first hole in stroke play instead of disqualification.

Discontinuance of Play; Protection of Persons Against Lightning

As there have been many deaths and injuries from lightning on golf courses, all clubs and sponsors of golf competitions are urged to take precaution for the protection of persons against lighting. Attention is called to Rules 6-8 and 33-2d. If the Committee desires to adopt the condition in the Note under Rule 6-8b, the following wording is recommended:

> Rule 6-8b details the procedure for discontinuance of play. The penalty for a breach of Rule 6-8b is disqualification. However, it is a condition of competition that, in potentially dangerous situations, play shall be discontinued immediately following a suspension of play by the Committee. If a player fails to discontinue play immediately, he shall be disqualified unless circumstances warrant waiving such penalty as provided in Rule 33-7. An immediate suspension of play will be signalled by a prolonged note of the siren.

The USGA suggests that players be informed that they have the right to stop play if they think lightning threatens them, even though the Committee may not have specifically authorized it by signal.

The USGA generally uses the following signals and recommends that all Committees do similarly:

Discontinue Play Immediately: One prolonged note of siren.

Discontinue Play: Three consecutive notes of siren, repeated.

Resume Play: Two short notes of siren, repeated.

Practice

The Committee may make regulations governing practice in accordance with the Note to Rule 7-1, Clause (c) of the Exception under Rule 7-2 and Rule 33-2c.

Advice in Team Competitions

If the Committee desires to adopt the condition in the Note under Rule 8, which applies to a team competition with or without concurrent individual competition, the following wording is recommended:

> In accordance with the Note to Rule 8 of the Rules of Golf, each team may appoint one person (in addition to the persons from whom advice may be asked under Rule 8-1) who may give advice (including pointing out a line for putting) to members of that team. Such person [if it is desired to put a restriction on who may be appointed and/ or permissible conduct of that person, insert such restriction here] shall be identified to the Committee before giving advice.

Transportation

If it is desired to require players to walk in a competition, the following condition is suggested:

Players shall walk at all times during a stipulated round.

PENALTY FOR BREACH OF CONDITION:

. Match play—At the conclusion of the hole at which the breach is discovered, the state of the match shall be adjusted by deducting one hole for each hole at which a breach occurred. Maximum deduction per round : two holes.

Stroke play—Two strokes for each hole at which any breach occurred; Maximum penalty per round: four strokes. In the event of a breach between the play of two holes, the penalty applies to the next hole.

Match or stroke play—Use of any unauthorized form of transportation shall be discontinued immediately upon discovery that a breach has occurred. Otherwise, the player shall be disqualified.

* * * *

Conditions of the Competition

Rule 33-1 states: "The Committee shall lay down the conditions under which a competition is to be played." Conditions should include such matters as method of entry, eligibility requirements, format, the method of deciding ties, the method of determining the draw for match play and handicap allowances for a handicap competition

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

CONDITIONS OF COMPETITION AND LOCAL RULES

The Rules of the United States Golf Association govern play, as modified by the PGA TOUR. See applicable competition's "Notice to Competitors (Players)" for additional Definitions, Local Rules and Conditions. Complete text of Rules and Appendix I may be found in the current Rules of Golf.

Unless otherwise noted, the penalty for a breach of a Local Rule or Condition is:

Match play—Loss of Hole; Stroke Play—Two Strokes

Section A - Conditions of Competition

1. **List of Conforming Golf Balls—Appendix I**
Only brands of golf balls on the USGA's current List of Conforming Golf Balls may be used. Penalty for use of brand not on the List: Disqualification.

2. **Limitation on Golf Balls Used During Round (One-Ball Rule Except for Amateur Players in Pro-Am)—Appendix I, Rules 5-1 and 33-1**

a. Balls With Identical Markings To Be Used
During a stipulated round, the balls a player uses must be of the same brand and type as detailed by a single entry on USGA's current list of Conforming Golf Balls. Penalty for Breach of Condition:

Match play—At the conclusion of the hole at which the breach is discovered, the state of the match shall be adjusted by deducting one hole for each hole at which a breach occurred. Maximum deduction per round: two holes.

Stroke play—Two strokes for each hole at which any breach occurred; maximum penalty per round: four strokes.

b. Procedure When Breach Discovered
When a player discovers that he has used a ball in breach of this condition, he shall abandon that ball before playing from the next teeing ground and complete the round using a proper ball; otherwise, the player shall be disqualified. If discovery is made during play of a hole and the player elects to substitute a proper ball before completing that hole, the player shall place a proper ball on the spot where the ball used in breach of this condition lay.

3. **Time of Starting—Note Under Rule 6-3 and Appendix I**
If a player arrives at his starting point, ready to play, within five minutes after his starting time, in the absence of circumstances which warrant waiving the penalty of disqualification as provided in Rule 33-7, the penalty for failure to start on time is loss of the first hole in match play or two strokes at the first hole in stroke play instead of disqualification.

4. **Slow Play—Note 2 Under Rule 6-7**
See posted PGA TOUR Pace of Play Guidelines and Slow Play Fines and Penalties.

5. **Suspension of Play Due to a Dangerous Situation—Note Under Rule 6-8b**
In potentially dangerous situations, play shall be discontinued immediately following a suspension of play by the Committee. If a player fails to discontinue play immediately, he shall be disqualified unless circumstances warrant waiving such penalty as provided in Rule 33-7.

Note: A suspension for a dangerous situation shall be signaled by one prolonged air horn (or siren) note. All other types of suspension shall be signalled by several consecutive, short air horn (or siren) notes. Resumption of play shall be signalled by two consecutive, short air horn (or siren) notes.

All practice areas shall be closed during such suspension until the PGA TOUR Rules Committee has declared them open. Players who disregard such closings shall be subject to disciplinary action.

6. **Transportation—Appendix I**
Players shall walk at all times during a stipulated round unless permitted to ride by the PGA TOUR Rules Committee. Penalty for Breach of Condition:

Match play—At the conclusion of the hole at which the breach is discovered, the state of the match shall be adjusted by deducting one hole for each hole at which a breach occurred. Maximum deduction per round: two holes.

Stroke play—Two strokes for each hole at which any breach occurred; maximum penalty per round: four strokes. In the event of a breach between the play of two holes, the penalty applies to the next hole.

Match or stroke play—Use of any unauthorized form of transportation shall be discontinued immediately upon discovery that a breach has occurred. Otherwise, the player shall be disqualified.

7. **Close of Competition**
The competition shall be deemed to have closed when all scores have been posted on the official scoreboard and approved by the PGA TOUR Rules Committee.

Section B - Local Rules

1. **Out of Bounds—Rule 27**

a. When white stakes or fences are used, the out of bounds line is determined by the nearest inside points of the stakes or fence posts at ground level, excluding angled supports.
b. When a white line is used, the line itself is out of bounds.
c. A ball that crosses the inside edge of a road or curb defined as out of bounds and comes to rest beyond the road or curb is out of bounds, even though it may be on another part of the course.

2. **Water and Lateral Water Hazards Stakes and Lines—Rule 26**
When both stakes and lines are used to define water and lateral water hazards, stakes identify hazards and lines define margins.

Water hazards are defined by yellow stakes or yellow lines.
Lateral water hazards are defined by red stakes or red lines.

3. **Ground Under Repair—Rule 25**
Defined by white lines and includes areas marked as gallery crosswalks. Fire-ant hills, french drains, and grass covered cable trenches are deemed to be ground under repair even though unmarked.

4. **Embedded Ball Through the Green—Appendix I**
Anywhere "through the green," a ball which is embedded in its own pitch-mark in the ground, except in loose sand, may be lifted without penalty, cleaned and dropped as near as possible to the spot where it lay but not nearer the hole. (See Rule 20.) The ball when dropped must first strike a part of the course through the green.

("Through the green" is the whole area of the course except:
a. The teeing ground and putting green of the hole being played;
b. All hazards on the course.)

Exception: A player may not obtain relief under this Rule if it is clearly unreasonable for him to play a stroke because of interference by anything other than the condition covered by this Rule.

5. **Immovable Obstructions—Rule 24-2**
White-lined areas tying into artificially surfaced roads, paths or obstructions are declared to have the same status as the road, path or obstructions and are not ground under repair.

6. **Integral Parts of the Course**
Includes (a) wrappings, wires and cables when closely attached to objects and (b) artificial walls and pilings when located within water hazards or within and/or around bunkers.

7. **Permanent Elevated Power Lines or Cables**
If a ball strikes such power line or cable, the player must disregard that stroke, abandon the ball and play another ball in accordance with Rule 20-5 (for temporary power lines or cables, see item #11).

8. **Touching Line of Putt—Appendix I**
The line of putt shall not be touched with a club for any purpose except to repair old hole plugs or ball marks or during address. (This modifies Rule 16-1a.)

9. **Practice—Note 2 Under Rule 7-2 and Appendix I**
Between the play of two holes, a player shall not play any practice stroke on or near the putting green of the hole last played. (For other practice, see Rules 7 and 33-2c.)

The Local Rule above does not apply if the stipulated round is a pro-am that does not count in the official competition or in any match play competition.

During suspension of play, practice is permitted only on areas specifically designated by the PGA TOUR Rules Committee.

10. **Temporary Obstructions—Appendix I**
(Includes anything installed for the competition). White-lined areas alongside or tying into temporary obstructions are declared to have the same status as the obstructions.

1. **Definition**
A temporary immovable obstruction is a non-permanent artificial object which is often erected in conjunction with a competition and which is fixed or not readily movable.

Examples of temporary immovable obstructions include, but are not limited to, tents, scoreboards, grandstands, television towers and lavatories.

Supporting guy wires are part of the temporary immovable obstruction unless the Committee declares that they are to be treated as elevated power lines or cables.

Note: A temporary movable obstruction is a non-permanent artificial object often erected in conjunction with a competition and which is not fixed or may be moved.

Examples of temporary movable obstructions include, but are not limited to, gallery stakes and ropes, hole indicator signs, equipment for photography, press, radio, scoring or television (see Rule 24-1).

2. **Interference**
Interference by a temporary immovable obstruction occurs when (a) the ball lies in front of and so close to the obstruction that the obstruction interferes with the player's stance or the area of his intended swing, or (b) the ball lies in, on, under or behind the obstruction so that any part of the obstruction intervenes directly between the player's ball and hole; interference also exists if the ball lies within one club-length of a spot where such intervention would exist.

Note: A ball is under a temporary immovable obstruction when it is below the outer most edges of the obstruction, even if these edges do not extend downwards to the ground.

3. **Relief**
A player may obtain relief from interference by a temporary immovable obstruction, including a temporary immovable obstruction which is out of bounds, as follows:

a. **Through the Green**
If the ball lies through the green, the point on the course nearest to where the ball lies shall be determined which (a) is not nearer the hole, (b) avoids interference as defined in Clause 2 and (c) is not in a hazard or on a putting green. The player shall lift the ball and drop it without penalty within one club-length of the point thus determined on a part of the course which fulfills (a), (b) and (c) above.

b. **In a Hazard**
If the ball is in a hazard, the player shall lift and drop the ball either:

(i) Without penalty, in the hazard, as near as possible to the spot where the ball lay, but not nearer the hole, on a part of the course which affords maximum available relief from interference as defined in Clause 2; or

(ii) Under penalty of one stroke, outside the hazard as follows: the point on the course nearest to where the ball lies shall be determined which (a) is not nearer the hole, (b) avoids interference as defined in Clause 2 and (c) is not in a hazard. The player shall drop the ball within one club-length of the point thus determined on a part of the course which fulfills (a), (b) and (c) above.

Note: If the ball lies in a hazard, nothing in this Local Rule precludes the player from proceeding under Rule 26 or Rule 28, if applicable.

The ball may be cleaned when lifted under Clause 3.

Exceptions:
A player may not obtain relief under Clause 3 if:

1. It is clearly unreasonable for him to play a stroke or, in the case of intervention, to play a stroke directly towards the hole, because of interference by anything other than the temporary immovable obstruction;

2. Interference by the temporary immovable obstruction would occur only through use of an unnecessarily abnormal stance, swing or direction of play; or

3. In the case of intervention, it would be clearly unreasonable to expect the player to be able to strike the ball far enough towards the hole to reach the temporary immovable obstruction.

Note: A Committee may make a Local Rule (a) permitting or requiring a player to use a dropping zone (ball drop) when taking relief from a temporary immovable obstruction or (b) permitting a player, as an additional relief option, to drop the ball on the opposite side of the obstruction from the point established under Clause 3, but otherwise in accordance with Clause 3.

4. **Ball Lost**
If there is reasonable evidence that the ball is lost in, on or under a temporary immovable obstruction, a ball may be dropped under the provisions of Clause 3 or Clause 5, if applicable. For the purpose of applying Clause 3 and 5, the ball shall be deemed to lie at the spot where it entered the obstruction (Rule 24-2c).

5. **Dropping Zones (Ball Drops)**
If the player has interference from a temporary immovable obstruction, the Committee may permit or require the use of a dropping zone (ball drop). If the player uses a dropping zone (ball drop) in taking relief, he must drop the ball in the dropping zone (ball drop) nearest to where his ball originally lay or is deemed to lie under Clause 4 (even though the nearest dropping zone (ball drop) may be nearer the hole).

Note: A Committee may make a Local Rule prohibiting the use of a dropping zone (ball drop) that is nearer the hole.

6. **Re-Dropping**
If a dropped ball rolls into a position covered by this Local Rule or a position covered by Rule 20-2c, it shall be re-dropped without penalty. If the ball when re-dropped rolls into such a position, it shall be placed as near as possible to the spot where it first struck a part of the course when re-dropped.

Note: If the ball is dropped in a dropping zone (ball drop), the ball shall not be re-dropped if it comes to rest within two club-lengths of the spot where it first struck a part of the course even though it may come to rest nearer the hole or outside the boundaries of the dropping zone (ball drop).

11. **Temporary Power Lines or Cables**
Temporary power lines, cables, telephone lines and mats covering or stanchions supporting them are obstructions:

1. If they are readily movable, Rule 24-1 applies.

2. If they are fixed or not readily movable, the player may, if the ball lies through the green or in a bunker, obtain relief as provided in Rule 24-2b. If the ball lies in a water hazard, the player may obtain relief under Rule 24-2b(i) except that the ball must be dropped in the water hazard.

Note: The prohibition in Rule 24-2 against crossing over, through or under the obstruction does not apply.

3. If a ball strikes an elevated power line or cable, the stroke shall be canceled and replayed, without penalty (see Rule 20-5). If the ball is not immediately recoverable another ball may be substituted.

Note: Guy wires supporting a temporary immovable obstruction are part of the temporary immovable obstruction unless the Committee, by Local Rule, declares that they are to be treated as elevated power lines or cables.

Exception: Ball striking elevated junction section of cable rising from the ground shall not be replayed.

4. Grass-covered cable trenches are ground under repair and Rule 25-1b applies.

The following Conditions and Local Rules apply in U.S. PGA TOUR cosponsored tournaments ONLY

Marking Position of Lifted Ball—Appendix I
Before a ball on the putting green is lifted, its position shall be marked by placing a small coin or some similar object immediately behind the ball; if the ball-marker interferes with another player, it should be moved one or more putterhead-lengths to one side. If the position of the ball is not so marked, the player shall incur a penalty of one stroke and the ball shall be replaced. If the ball is not replaced, the player shall incur the penalty for breach of Rule 20-3a, but no additional penalty under this Local Rule shall be applied. (This modifies Rule 20-1.)

Turf Plugs on Putting Greens
Turf plugs on putting green are deemed to have the same status as hole plugs and thus may be repaired as prescribed in Rule 16-1c.

Pro-Am Competition—Amateur Players
During a separate pro-am round, if unable to score better than (net) par on a hole, amateur players are required to discontinue play on that hole.

Pro-Am Competition—Score Card
The professional player is responsible for recording scores on the score card of his team. The amateur player's gross score shall be entered when used as the team's best ball. The score card shall be signed by the professional player and attested by one of his amateur partners. Penalties for breach(es) shall be in accordance with the Rules of Golf, but apply only to the professional player.

PGA TOUR RULES COMMITTEE

Tournament Officials
George Bozell / Jon Brendle / Frank Kavanaugh / Vaughn Moise
Mark Russell / Glenn Tait / Slugger White

Tournament Supervisor
Wade Cagle

Senior Director of Rules
Mike Shea

Tournament Directors
Arvin Gine / Ben Nelson

NIKE TOUR
CONDITIONS OF COMPETITION AND LOCAL RULES

The Rules of the United States Golf Association govern play, as modified by the NIKE TOUR. See applicable competition's "Notice to Competitors (Players)" for additional Definitions, Local Rules and Conditions. Complete text of Rules and Appendix I may be found in the current Rules of Golf.

Unless otherwise noted, the penalty for breach of a Local Rule or Condition is:

Match Play - Loss of Hole; Stroke Play - Two Strokes

Section A - Conditions of Competition

1. List of Conforming Golf Balls - Appendix I
Only brands of golf balls on the USGA's current List of Conforming Golf Balls may be used. Penalty for use of brand not on the List: Disqualification.

3. Limitation on Golf Balls Used During Round (One-Ball Rule Except for Amateur Players in Pro-Am) - Appendix I, Rules 5-1 and 33-1

a. Balls With Identical Markings To Be Used
During a stipulated round, the balls a player uses must be of the same brand and type as detailed by a single entry on the USGA's current list of Conforming Golf Balls. Penalty for Breach of Condition:

Match Play - At the conclusion of the hole at which the breach is discovered, the state of the match shall be adjusted by deducting one hole for each hole at which a breach occurred. Maximum deduction per round: two holes.

Stroke Play - Two strokes for each hole at which any breach occurred; maximum penalty per round: four strokes.

b. Procedure When Breach Discovered
When a player discovers that he has used a ball in breach of this condition, he shall abandon that ball before playing from the next teeing ground and complete the round using a proper ball; otherwise, the player shall be disqualified. If discovery is made during play of a hole and the player elects to substitute a proper ball before completing that hole, the player shall place a proper ball on the spot where the ball used in breach of this condition lay.

3. Time of Starting - Note under Rule 6-3 and Appendix I
If a player arrives at his starting point, ready to play, within five minutes after his starting time, in the absence of circumstances which warrant waiving the penalty of disqualification as provided in Rule 33-7, the penalty for failure to start on time is loss of the first hole in match play or two strokes at the first hole in stroke play instead of disqualification.

4. Slow Play - Note 2 under Rule 6-7
See posted NIKE TOUR Pace of Play Guidelines and Slow Play Fines and Penalties.

5. Suspension of Play Due to a Dangerous Situation - Note under Rule 6-8b
In potentially dangerous situations, play shall be discontinued immediately following a suspension of play by the Committee. If a player fails to discontinue play immediately, he shall be disqualified, unless circumstances warrant waiving such penalty as provided in Rule 33-7.
Note: A suspension for a dangerous situation shall be signaled by one prolonged air horn (or siren) note. All other types of suspension shall be signaled by several consecutive, short air horn (or siren) notes. Resumption of play shall be signaled by two consecutive, short air horn (or siren) notes.

All practice areas shall be closed during such suspension until the NIKE TOUR Rules Committee has declared them open. Players who disregard such closing shall be subject to disciplinary action.

6. Transportation - Appendix I
Players shall walk at all times during a stipulated round, unless permitted to ride by the NIKE TOUR Rules Committee.
Penalty of Breach of Condition:

Match Play - At the conclusion of the hole at which a breach is discovered, the state of the match shall be adjusted by deducting one hole for each hole at which a breach occurred. Maximum deduction per round: two holes.

Stroke Play - Two strokes for each hole at which any breach occurred; maximum penalty per round: four strokes. In the event of a breach between the play of two holes, the penalty applies to the next hole.

Match or stroke play - Use of any unauthorized form of transportation shall be discontinued immediately upon discovery that a breach has occurred. Otherwise, the player shall be disqualified.

7. Close of Competition
The competition shall be deemed to have closed when all scores have been posted on the official scoreboard and approved by the NIKE TOUR Rules Committee.

Section B - Local Rules

1. Out of Bounds - Rule 27
a. When white stakes or fences are used, the out of bounds line is determined by the nearest inside points of the stakes or fence posts at ground level, excluding angled supports.
b. When a white line is used, the line itself is out of bounds.
c. A ball that crosses the inside edge of a road or curb defined as out of bounds, and comes to rest beyond the road or curb is out of bounds, even though it may be on another part of the course.

3. Water and Later Water Hazards Stakes and Lines - Rule 26
When both stakes and lines are used to define water and later water hazards, stakes identify hazards and lines define margins.

Water hazards are defined by yellow stakes or yellow lines.
Later water hazards are defined by red stakes or red lines.

3. Ground Under Repair - Rule 25
Defined by white lines and includes areas marked as gallery crosswalks. Fire-ant hills, french drains, and grass covered cable trenches are deemed to be ground under repair even though unmarked.

4. Embedded Ball Through the Green - Appendix I
Anywhere "through the green," a ball which is embedded in its own pitch-mark in the ground, except in loose sand, may be lifted without penalty, cleaned and dropped as near as possible to the spot where it lay but not nearer the hole. (See Rule 20.) The ball when dropped must first strike a part of the course through the green.

("Through the green" is the whole area of the course except:
a. The teeing ground and the putting green of the hole being played;
b. All hazards on the course.)
Exception: A player may not obtain relief under this Rule if it is clearly unreasonable for him to play a stroke because of interference by anything other than the condition covered by this Rule.

5. Immovable Obstructions - Rule 24-3
White lined areas tying into artificially surfaced roads, paths or obstructions are declared to have the same status as the road, path or obstructions and are not ground under repair.

6. Integral Parts of the Course
Includes (a) wrappings, wires and cables when closely attached to objects and (b) artificial walls and pilings when located within water hazards or within and/or around bunkers.

7. Permanent Elevated Power Lines or Cables
If a ball strikes such power line or cable, the player must disregard that stroke, abandon the ball and play another ball in accordance with Rule 20-5 (for temporary power lines or cables -see item #11).

8. Touching Line of Putt - Appendix I
The line of putt shall not be touched with a club for any purpose except to repair old hole plugs or ball marks, or during address. (This modifies Rule 16-1a.)

9. Practice - Note 3 under Rule 7-3 and Appendix I
Between the play of two holes, a player shall not play any practice stroke on or near the putting green of the hole last played. (For other practice, see Rules 7 and 33-3c.)

The Local Rule above does not apply if the stipulated round is a pro-am and the round does not count in the official competition or is any match play competition.

During suspension of play, practice is permitted only on areas specifically designated by the NIKE TOUR Rules Committee.

10. Temporary Obstructions - Appendix I
(Includes anything installed for the competition). White-lined areas alongside or tying into temporary immovable obstructions are declared to have the same status as the obstructions.

1. Definition
A temporary immovable obstructions is a non-permanent artificial object which is often erected in conjunction with a competition and which is fixed or not readily movable.

Examples of temporary immovable obstructions include, but are not limited to, tents, scoreboards, grandstands, television towers and lavatories.

Supporting guy wires are part of the temporary immovable obstruction unless the Committee declares that they are to be treated as elevated power lines or cables.

Note: A temporary movable obstruction is a non-permanent artificial object often erected in

conjunction with a competition and which is not fixed or maybe moved.

Examples of temporary movable obstructions include, but are not limited to, gallery stakes and ropes, hole indicator signs, equipment for photography, press, radio, scoring or television (see Rule 34-1).

2. **Interference**
Interference by a temporary immovable obstruction occurs when (a) the ball lies in front of and so close to the obstruction that the obstruction interferes with the player's stance or the area of his intended swing, or (b) the ball lies in, on, under or behind the obstruction so that any part of the obstruction intervenes directly between the player's ball and the hole; interference also exists if the ball lies within one club-length of a spot where such intervention would exist.

Note: A ball is under a temporary immovable obstruction when it is below the outer most edges of the obstruction, even if these edges do not extend downwards to the ground.

3. **Relief**
A player may obtain relief from interference by a temporary immovable obstruction, including a temporary immovable obstruction which is out of bounds, as follows:

a. **Through the Green**
If the ball lies through the green, the point on the course nearest to where the ball lies shall be determined which (a) is not nearer the hole, (b) avoids interference as defined in Clause 2 and (c) is not in a hazard or on a putting green. The player shall lift the ball and drop it without penalty within one club-length of the point thus determined on a part of the course which fulfills (a), (b) and (c) above.

b. **In a Hazard**
If the ball is in a hazard, the player shall lift and drop the ball either:

(i) Without penalty, in the hazard, on the nearest part of the course affording complete relief within the limits specified in Clause 3a above or, if complete relief is impossible, on a part of the course within the hazard which affords maximum available relief; or

(ii) Under penalty of 1 stroke, outside the hazard as follows: the point on the course nearest to where the ball lies shall be determined which (a) is not nearer the hole, (b) avoids interference as defined in Clause 2 and (c) is not in a hazard. The player shall drop the ball within one club-length of the point thus determined on a part of the course which fulfills (a), (b) and (c) above.

Note: If the ball lies in a hazard, nothing in this Local Rule precludes the player from proceeding under Rule 26 or Rule 28, if applicable.

The ball may be cleaned when lifted under Clause 3.

Exceptions:
A player may not obtain relief under Clause 3 if:

1. It is clearly unreasonable for him to play a stroke or, in the case of intervention, to play a stroke directly towards the hole, because of interference by anything other than the temporary immovable obstruction.

2. Interference by the temporary immovable obstruction would occur only through use of an unnecessarily abnormal stance, swing or direction of play; or

3. In the case of intervention, it would be clearly unreasonable to expect the player to be able to strike the ball far enough towards the hole to reach the temporary immovable obstruction.

Note: A Committee may make a Local Rule (a) permitting or requiring a player to use a dropping zone (ball drop) when taking relief from a temporary immovable obstruction or (b) permitting a player, as an additional relief option, to drop the ball on the opposite side of the obstruction from the point established under Clause 3, but otherwise in accordance with Clause 3.

4. **Ball Lost**
If there is reasonable evidence that the ball is lost in, on or under a temporary immovable obstruction, a ball may be dropped under the provisions of Clause 3 or Clause 5, if applicable. For the purpose of applying Clause 3 and 5, the ball shall be deemed to lie at the spot where it entered the obstruction (Rule 24-3c).

5. **Dropping Zones (Ball Drops)**
If the player has interference from a temporary immovable obstruction, the Committee may permit or require the use of a dropping zone (ball drop). If the player uses a dropping zone (ball drop) in taking relief, he must drop the ball in the dropping zone (ball drop) nearest to which the ball originally lay or is deemed to lie under Clause 4 (even though the nearest dropping zone (ball drop) may be nearer the hole).

Note: A Committee may make a Local Rule prohibiting the use of a dropping zone (ball drop) that is nearer the hole.

6. **Re-Dropping**
If a dropped ball rolls into a position covered by this Local Rule or a position covered by Rule 20-2c, it shall be re-dropped without penalty. If the ball when re-dropped rolls into such a position, it shall be placed as near as possible to the spot where it first struck a part of the course when re-dropped.

Note: If the ball is dropped in a dropping zone (Ball Drop), the ball shall not be re-dropped if it comes to rest within two club-lengths of the spot where it first struck a part of the course even though it may come to rest nearer the hole or outside the boundaries of the dropping zone (Ball Drop).

11. **Temporary Power Lines or Cables**
Temporary power lines, cables, telephone lines and mats covering or stanchions supporting them are obstructions.

1. If they are readily movable, Rule 24-1 applies.

2. If they are fixed or not readily movable, the player may, if the ball lies through the green or in a bunker, obtain relief as provided in Rule 24-2b. If the ball lies in a water hazard, the player may obtain relief under Rule 24-3b (i) except that the ball must be dropped in the water hazard.

Note: The prohibition in Rule 24-3 against crossing over, through or under the obstruction does not apply.

3. If a ball strikes an elevated power line or cable, the stroke shall be canceled and replayed, without penalty (see Rule 20-3). If the ball is not immediately recoverable another ball may be substituted.

Note: Guy wires supporting a temporary immovable obstruction are part of the temporary immovable obstruction unless the Committee, by Local Rule, declares that they are to be treated as elevated power lines or cables.

Exception: Ball striking elevated junction section of cable rising from the ground shall not be replayed.

4. Grass-covered cable trenches are ground under repair and Rule 25-1b applies.

The following Conditions and Local Rules apply in U.S. NIKE TOUR cosponsored tournaments ONLY

Marking Position of Lifted Ball - Appendix I
Before a ball on the putting green is lifted, its position shall be marked by placing a small coin or some similar object immediately behind the ball; if the ball-marker interferes with another player, it should be moved one or more putter head-lengths to one side. If the position of the ball is not so marked, the player shall incur a penalty of one stroke and the ball shall be replaced. If the ball is not replaced, the player shall incur the penalty for breach of Rule 20-3a, but no additional penalty under this Local Rule shall be applied. (This modifies Rule 20-1.)

Turf Plugs on Putting Greens
Turf Plugs on putting green are deemed to have the same status as hole plugs and thus may be repaired as prescribed in Rule 16-1c.

Pro-Am Competition - Amateur Players
During a separate pro-am round, if unable to score better than (net) par on a hole, amateur players are required to discontinue play of that hole.

Pro-Am Competition - Score Card
The professional player is responsible for recording scores on the score card of his team. The amateur player's gross score shall be entered when used as the team's best ball. The score card shall be signed by the professional player and attested by one of his amateur partners. Penalties for breach(es) shall be in accordance with the Rules of Golf, but apply only to the professional player.

NIKE TOUR RULES COMMITTEE

Tournament Officials
Mickey Bradley / Michael Combs / Matt Delany
Orlando Pope / Tony Wallin

Tournament Director
Jim Duncan

Assistant Tournament Director
Boots Widener

Official Scorekeeper
John Beaudet

[Logo]

* * * *

If the match was to be played on any day in a prescribed period, A and B must replay the match within the prescribed period. If it was too late for A and B to replay the match within the period, A and B are disqualified, unless one concedes the match to the other—see Rule 2-4.

It would not be proper to allow A to replay the round in the stroke play competition. A had already competed in that competition, and his score was unacceptable.

Competing Simultaneously in Bogey or Stableford Competition and Stroke Play Competition—See 32-1/1.

33-1/7 Making Competitors Responsible for Adding Scores

Q. May the Committee make it a condition of a competition that competitors are responsible for the addition of scores?

A. No. Such a condition would modify Rule 33-5.

Requirement that Alteration on Score Card Be Initialled—See 6-6a/6

33-1/8 Use of Golf Carts in Competition

Q. May a player use a golf cart during a competition?

A. Yes, unless such equipment is prohibited in the conditions of the competition (Rule 33-1).

33-1/9 Breach of Condition Prohibiting Golf Carts

Q. A condition of a competition prohibits the use of golf carts. If a player infringes this condition, what is the penalty?

A. If no penalty is stated, the general penalty applies at each hole where the cart is used, *i.e.*, loss of hole in match play (Rule 2-6) or two strokes in stroke play (Rule 3-5).

Who May Serve as Caddie—See 6-4/2

* * * *

PGA TOUR
Prize Escrow Fund
112 TPC Boulevard
Ponte Vedra, Florida 32082
904-285-3700

PAYER'S Federal ID number: 59-204-3648

RECIPIENT'S ID number: 542-74-4112

RECIPIENT'S name, street address, city, state and ZIP code:

Casey Martin
C/O Kevin Greig
1170 Pearl St.

Eugene, OR 97401-3500

Account number (optional)

2nd TIN Not. ☐

OMB No. 1545-0115

1997

Miscellaneous Income

2 Royalties $	
3 Other income $	
4 Federal income tax withheld $	5 Fishing boat proceeds $
6 Medical and health care payments $	7 Nonemployee compensation $ 3,000.00
8 Substitute payments in lieu of dividends or interest $	9 Payer made direct sales of $5000 or more of consumer products to a buyer (recipient) for resale ☐
10 Crop insurance proceeds $	11 State income tax withheld $
12 State/Payer's state number	

Copy C
For Payer
or State Copy

Form 1099-MISC Department of the Treasury - Internal Revenue Service

[redacted]

SCHEDULE C (Form 1040)
Department of the Treasury Internal Revenue Service (99)

Profit or Loss From Business
(Sole Proprietorship)

▶ Partnerships, joint ventures, etc., must file Form 1065.
▶ Attach to Form 1040 or Form 1041. ▶ See Instructions for Schedule C (Form 1040).

1996
Attachment Sequence No. 09

Name of proprietor

CASEY M MARTIN

Social security number (SSN)
542-74-4112

A Principal business or profession, including product or service
PROFESSIONAL GOLFER

B Enter principal business code (see page C-6) ▶ 8888

C Business name. If no separate business name, leave blank.
CASEY MARTIN

D Employer ID number (EIN), if any

E Business address (including suite or room no.) ▶ 3639 SPRING BLVD.
City, town or post office, state, and ZIP code EUGENE, OR 97405

F Accounting method: (1) [X] Cash (2) [ ] Accrual (3) [ ] Other (specify) ▶

G Did you "materially participate" in the operation of this business during 1996? If "No," see page C-2 for limit on losses [X] Yes [ ] No

H If you started or acquired this business during 1996, check here ▶ [ ]

Part I Income

1	Gross receipts or sales. Caution: *If this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked, see page C-2 and check here* ▶ [ ]	1	[redacted]
2	Returns and allowances	2	
3	Subtract line 2 from line 1	3	[redacted]
4	Cost of goods sold (from line 42 on page 2)	4	
5	Gross profit. Subtract line 4 from line 3	5	[redacted]
6	Other income, including Federal and state gasoline or fuel tax credit or refund	6	
7	Gross income. Add lines 5 and 6 ▶	7	[redacted]

Part II Expenses. Enter expenses for business use of your home only on line 30.

8	Advertising	8		19	Pension and profit-sharing plans	19	
9	Bad debts from sales or services (see page C-6)	9		20	Rent or lease (see page C-6):		
10	Car and truck expenses (see page C-6)	10		a	Vehicles, machinery, and equipment	20a	
11	Commissions and fees	11		b	Other business property	20b	
12	Depletion	12		21	Repairs and maintenance	21	
13	Depreciation and section 179 expense deduction (not included in Part III)	13		22	Supplies (not included in Part III)	22	[redacted]
14	Employee benefit programs (other than on line 19)	14		23	Taxes and licenses	23	
15	Insurance (other than health)	15	[redacted]	24	Travel, meals, and entertainment:		
16	Interest:			a	Travel	24a	
a	Mortgage (paid to banks, etc.)	16a		b	Meals and entertainment		[redacted]
b	Other	16b		c	Enter 50% of line 24b subject to limitations (see page C-6)		[redacted]
17	Legal and professional services	17	[redacted]	d	Subtract line 24c from line 24b	24d	[redacted]
18	Office expense	18	[redacted]	25	Utilities	25	[redacted]
				26	Wages (less employment credits)	26	
				27	Other expenses (from line 48 on page 2)	27	[redacted]
28	Total expenses before expenses for business use of home. Add lines 8 through 27 in columns ▶					28	[redacted]
29	Tentative profit (loss). Subtract line 28 from line 7					29	[redacted]
30	Expenses for business use of your home. Attach Form 8829					30	
31	Net profit or (loss). Subtract line 30 from line 29. • If a profit, enter on Form 1040, line 12, and ALSO on Schedule SE, line 2 (statutory employees, see page C-5). Estates and trusts, enter on Form 1041, line 3. • If a loss, you MUST go on to line 32.					31	[redacted]
32	If you have a loss, check the box that describes your investment in this activity (see page C-5). • If you checked 32a, enter the loss on Form 1040, line 12, and ALSO on Schedule SE, line 2 (statutory employees, see page C-5). Estates and trusts, enter on Form 1041, line 3. • If you checked 32b, you MUST attach Form 6198.					32a [ ] All investment is at risk. 32b [ ] Some investment is not at risk.	

LHA For Paperwork Reduction Act Notice, see Form 1040 instructions. Schedule C (Form 1040) 1996

[redacted]

Part III Cost of Goods Sold (see page C-6)

33 Method(s) used to value closing inventory: a ☐ Cost b ☐ Lower of cost or market c ☐ Other (attach explanation)

34 Was there any change in determining quantities, costs, or valuations between opening and closing inventory? If "Yes," attach explanation ☐ Yes ☐ No

35	Inventory at beginning of year. If different from last year's closing inventory, attach explanation	35	
36	Purchases less cost of items withdrawn for personal use	36	
37	Cost of labor. Do not include salary paid to yourself	37	
38	Materials and supplies	38	
39	Other costs	39	
40	Add lines 35 through 39	40	
41	Inventory at end of year	41	
42	Cost of goods sold. Subtract line 41 from line 40. Enter the result here and on page 1, line 4	42	

Part IV Information on Your Vehicle. Complete this part ONLY if you are claiming car or truck expenses on line 10 and are not required to file Form 4562 for this business. See the instructions for line 13 on page C-3 to find out if you must file.

43 When did you place your vehicle in service for business purposes? (month, day, year) ▶ / /

44 Of the total number of miles you drove your vehicle during 1996, enter the number of miles you used your vehicle for:

a Business _____ b Commuting _____ c Other _____

45 Do you (or your spouse) have another vehicle available for personal use? ☐ Yes ☐ No

46 Was your vehicle available for use during off-duty hours? ☐ Yes ☐ No

47a Do you have evidence to support your deduction? ☐ Yes ☐ No

b If "Yes," is the evidence written? ☐ Yes ☐ No

Part V Other Expenses. List below business expenses not included on lines 9-26 or line 30.

MISCELLANEOUS	[redacted]
CADDIE	[redacted]
ENTRY FEES	[redacted]
AIRFARE	[redacted]
CAR RENTAL	[redacted]
LODGING	[redacted]
AUTO EXPENSE	[redacted]
BANK CHARGES	[redacted]
RANGE FEES	[redacted]
48 Total other expenses. Enter here and on page 1, line 27	[redacted]

[redacted]

SCHEDULE SE (Form 1040)

Department of the Treasury
Internal Revenue Service

Self-Employment Tax

▶ See Instructions for Schedule SE (Form 1040).
▶ Attach to Form 1040.

OMB No. 1545-0074

1996

Attachment Sequence No. 17

Name of person with self-employment income (as shown on Form 1040)

CASEY M MARTIN

Social security number of person with self-employment income ▶ 542 | 74 | 4112

Who Must File Schedule SE

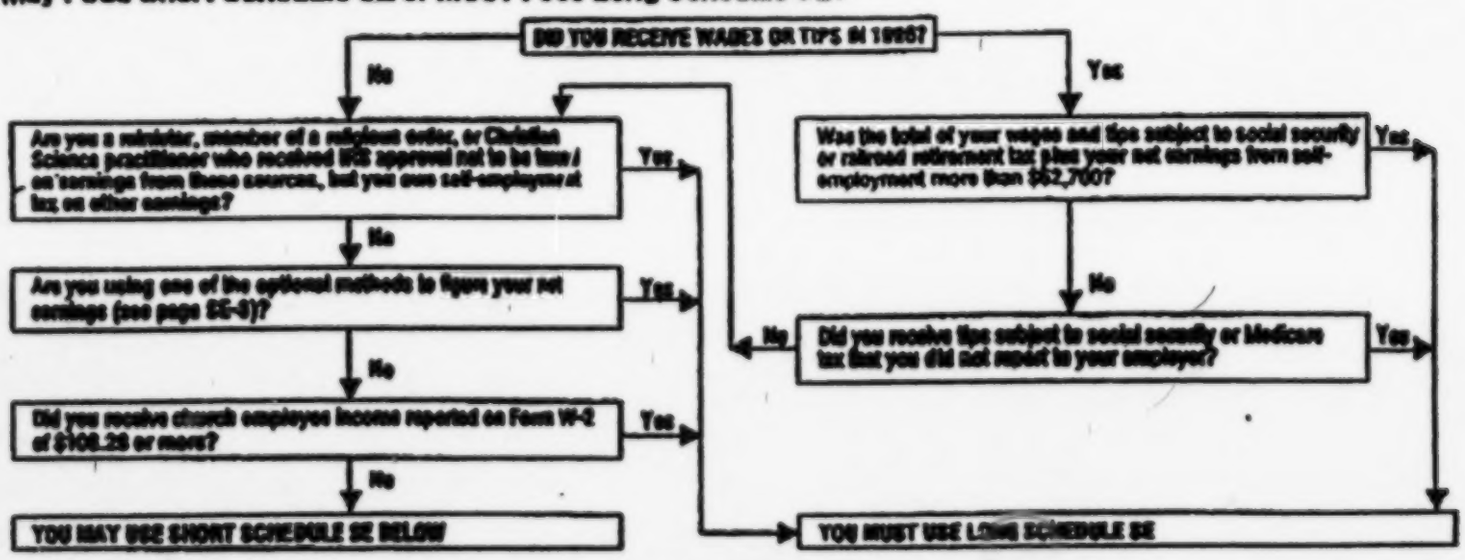
You must file Schedule SE if:

- You had net earnings from self-employment from other than church employee income (line 4 of Short Schedule SE or line 4c of Long Schedule SE) of $400 or more, OR
- You had church employee income of $108.28 or more. Income from services you performed as a minister or a member of a religious order is not church employee income. See page SE-1.

Note: Even if you have a loss or a small amount of income from self-employment, it may be to your benefit to file Schedule SE and use either "optional method" in Part II of Long Schedule SE. See page SE-3.

Exception. If your *only* self-employment income was from earnings as a minister, member of a religious order, or Christian Science practitioner, and you filed Form 4361 and received IRS approval not to be taxed on those earnings, do not file Schedule SE. Instead, write "Exempt-Form 4361" on Form 1040, line 45.

May I Use Short Schedule SE or MUST I Use Long Schedule SE?



Section A - Short Schedule SE. Caution: *Read above to see if you can use Short Schedule SE.*

1 Net farm profit or (loss) from Schedule F, line 36, and farm partnerships, Schedule K-1 (Form 1065), line 15a	1	
2 Net profit or (loss) from Schedule C, line 31; Schedule C-EZ, line 3; and Schedule K-1 (Form 1065), line 15a (other than farming). Ministers and members of religious orders see page SE-1 for amounts to report on this line. See page SE-2 for other income to report — SEE STATEMENT 4	2	[redacted]
3 Combine lines 1 and 2	3	[redacted]
4 Net earnings from self-employment. Multiply line 3 by 92.35% (.9235). If less than $400, do not file this schedule; you do not owe self-employment tax ▶	4	[redacted]
5 Self-employment tax. If the amount on line 4 is: • $62,700 or less, multiply line 4 by 15.3% (.153). Enter the result here and on Form 1040, line 46. • More than $62,700, multiply line 4 by 2.9% (.029). Then, add $7,774.80 to the result. Enter the total here and on Form 1040, line 46.	5	[redacted]
6 Deduction for one-half of self-employment tax. Multiply line 5 by 50% (.5). Enter the result here and on Form 1040, line 25	6	[redacted]

LHA For Paperwork Reduction Act Notice, see Form 1040 Instructions.

Schedule SE (Form 1040) 1996

[redacted]

TOURNAMENT FACILITIES AGREEMENT

THIS AGREEMENT, dated January 19, 1996 is made by and between Championship Management, a division of PGA TOUR, Inc., a Maryland corporation, with its principal offices located at 112 TPC Boulevard, Ponte Vedra, Florida 32082 ("CM") and East Lake Golf Club, a Georgia corporation, with its principal office located at 600 Peachtree Street, Suite 3830, Atlanta, Georgia 30308 ("EL").

* * * *

ARTICLE 1.

DEFINITIONS

1.1 Clubhouse. The term "Clubhouse" means the Clubhouse at the Golf Facility together with all adjacent decks, buildings, patios, and recreational amenities (e.g., tennis courts swimming pool, etc.) immediately adjacent to the clubhouse building.

1.2 Golf Facility. The term "Golf Facility" means East Lake Golf Club facility, which shall include, but not be limited to, one (1) 18-hole golf course commonly referred to as the Championship Course, clubhouse, golf shop, driving range, putting green, practice areas, storage areas, maintenance areas, halfway houses, shelters and parking areas.

1.3 Tournament Week. The term "Tournament Week" means the period of time beginning 12:01 a.m. on the Saturday preceding the Tournament and extending through the day following the completion of the Tournament competition. The scheduled dates for 1998 are October 26-November 1, 1998. These dates are subject to final approval of the Tournament Policy Board.

ARTICLE 2.

USE OF THE GOLF FACILITY

2.1 Golf Facility. EL hereby agrees to make available to CM, its guests, invitees and licensees the Golf Facility during Tournament Week. Specifically, EL shall make available to CM its guests, invitees and licensees, access to the Championship Course.

2.1.1 Total access to the Championship Course for Tournament purposes throughout Tournament Week.

CM acknowledges that the Championship course will be available for Club membership play through Friday preceding Tournament Week and commencing again at the conclusion of Tournament Week.

2.1.2 CM shall have the right to deny access to the Golf Facility, except the golf SHOP, during Tournament Week to any persons other than authorized CM personnel, emergency services personnel (e.g., police, fire and medical), participants and contestants, bona fide media representatives and persons holding valid admission badges, tickets or passes issued by CM in accordance with this Agreement. CM agrees that officers, board members and club staff require access to various restricted areas and will provide the appropriate credentials to allow access to those individuals, when in a working capacity.

2.1.3 CM acknowledges that the Golf Facility may be traversed by certain roads, pedestrian pathways and utility easements, which easements and rights-of-way may grant certain legal rights of access or passage by third parties who are outside the control of EL. CM hereby assumes the responsibility and expense of assuring the collection of admission fees and of the lawful denial of access to the Golf Facility by members of the Club and the public to the extent necessary for the conduct of the Tournament and related activities.

2.1.4 EL acknowledges that CM intends to utilize electronic scoreboards at the Tournament. The setup and removal of such scoreboards shall be undertaken by CM at no cost or expense to EL. CM agrees that, weather permitting, the electronic scoreboards will be removed from the golf course playing areas within one week following the conclusion of Tournament Week. CM agrees to repair any damage, under the supervision of EL, to the property occasioned by the setup and/or removal of such scoreboards, except for the areas of reasonable wear and tear, within two (2) weeks following the conclusion of Tournament Week.

2.1.5 CM will provide as agreed between CM and EL, a EL membership preferential sales package with respect to credentials permitting access to the Golf Facility during Tournament Week. CM agrees that the first two (2) Weekly Clubhouse Badges sold to each EL member will be at the Weekly Grounds Badge price (as such price is determined by CM).

2.1.6 EL shall make available their golf cart fleet for purposes of conducting Tournament operations Tournament Week. EL shall make available up to 12 golf carts in the 7 day period preceding and following Tournament Week to certain designated staff and tournament volunteers designated by CM for purposes of conducting Tournament set-up and logistics. Such carts will be provided on an "as available" basis so as not to interfere with normal club operations. Additionally, golf carts will not be permitted, or available for use by the amateur contestants playing in the Pro-Am unless said contestant is physically unable to walk the 18-hole course. All other Pro-Am contestants will walk with caddies. EL agrees to assist in recruiting and scheduling caddies for the Pro-Am. CM agrees to pay for such caddies at a cost not to exceed the usual caddie rate at East Lake.

2.2 Clubhouse. CM shall have the use of the Clubhouse during Tournament Week and may deny or restrict access to

the Clubhouse to any person other than those authorized by CM; including CM personnel, necessary emergency services personnel, participants, contestants, selected invitees of CM (e.g., patrons, Clubhouse badge holders) and persons with proper Clubhouse credentials. CM shall be solely responsible for regulating and enforcing such access restrictions. CM agrees that it will work with EL to designate the areas of the Clubhouse available for tournament use.

2.3 Clubhouse Food and Beverage. Notwithstanding the foregoing Section 2.2, EL shall retain the exclusive rights to conduct, collect and retain all revenues derived from the sale of food and beverage and alcohol and liquor sales within the clubhouse (EL shall also have the sole obligation to pay all expenses in connection therewith). EL agrees, with respect to regular dining room and bar operations within the clubhouse, to furnish food and beverage at a price which shall not exceed one hundred twenty-five percent (125%) of the Golf Facility's customary prices, during the week preceding Tournament Week except as otherwise agreed in advance by CM.

2.3.1 Clubhouse Credentials. CM agrees that the number of Clubhouse access credentials available for sale will be determined by EL. EL agrees to determine that quantity and notify CM no later than one (1) year prior to Tournament Week.

2.4 Golf Shop. Notwithstanding the foregoing Section 2.2, EL shall retain the exclusive rights to conduct, collect and retain all revenues from all pro shop operations (and EL shall also have the sole obligation to pay all expenses in connection therewith) excepting, however, revenues and related expenses of Tournament logoed items sold explained in Article 11.0 below.

2.5 Hospitality Areas. CM shall have the right to erect or arrange for the erection of domed, tented or similar hospitality areas on the Golf Facility. CM shall provide or

shall contract for the provision of all food, beverage, alcohol and liquor services to such hospitality areas and conduct, collect and distribute revenues derived from the sale of food, beverage, alcohol and liquor sales at such hospitality areas in accordance with the terms set forth in Section 6.0 below. EL acknowledges that CM may enter into an agreement with a third party concessionaire for the provision of such on-course food, beverage, alcohol and liquor sales.

2.6 On-Site Office Areas. Commencing within 30 days following the completion of the 1997 TOUR Championship and continuing through the end of the 1998 calendar year, EL shall provide to CM, for the purpose of coordinating and conducting the Tournament, office space located at the Golf Facility, or as near as possible, suitable for that purpose. Such space should be sufficient to provide adequate working space for up to 3 staff members, conference area, storage and limited volunteer work space, ideally totaling approximately 1,500 square feet. El shall provide basic office furnishings (desks, chairs, file cabinets, etc.). The furnishings for such office space shall be mutually acceptable to CM and EL. Office shall also include the use of the EL switchboard, base telephone service and telephone instruments. CM shall be responsible for all office equipment (computers, printers, fax machines, copiers, etc.) and shall reimburse EL for all long distance charges attributable to it's operations.

2.7 Parking.

2.7.1 In addition to all paved Clubhouse parking for use as VIP parking, EL will utilize best efforts to provide or make available at its cost a parking site for the general public as well as corporate VIP, which site may be located off the Golf Facility.

2.8 Maintenance. EL shall, at its expense, maintain the Golf Facility during Tournament Week as required by the TOUR Tournament Officials under the TOUR's then applicable Course Conditioning Guidelines, except to the

extent prohibited by applicable laws, rules and regulations. EL acknowledges that the full maintenance staff shall be required for each day of Tournament Week.

2.8.1 EL acknowledges that all normal and ordinary costs of maintaining the Golf Facility under the aforementioned Course Conditioning Guidelines (i.e. such costs as chemicals, fertilizers, sod, seed, labor costs, etc.) are the sole obligation of EL. TOUR acknowledges that certain requests for extraordinary improvements and/or modifications may be made by TOUR Rules Officials, TOUR Agronomy Staff or CM Staff and that the cost of such improvements and/or modifications would be the sole obligation of the Tournament, subject to approval prior to the commencement of any work.

2.9 Membership Lists. CM may, at its option and expense, prepare a Tournament "mailout" solicitation piece for distribution. EL shall, upon request by CM distribute such mailout to Club members.

* * * *

ARTICLE 5.
ACCESS TO GOLF FACILITY BEFORE AND AFTER TOURNAMENT

CM (and its Designees) shall have reasonable access to the Golf Facility for the six (6) week period prior to Tournament Week for purposes of preparation for the Tournament and for the six (6) week period following Tournament week for purposes of cleanup activities. CM agrees that all tents, scaffolding, equipment and other temporary structures will be removed from golf course playing areas within two weeks following the conclusion of the competition, weather permitting. CM acknowledges that such access shall not unreasonably hinder or impair normal play at the Golf Facility

* * * *

[Excerpt from Nike Tour Player Handbook & Tournament Regulations 1998—Draft]

* * * *

H. CADDIES AND GOLF CARTS

Players in cosponsored NIKE TOUR events shall not use automotive transportation unless otherwise determined by the Tournament Director, and then in accordance with procedures established by the Tournament Director. Unless otherwise determined by the Tournament Director, caddies must be employed for all practice rounds, qualifying rounds, pro-am rounds and tournament rounds.

Caddies shall be paid promptly. PGA TOUR shall determine who is eligible to be employed as a caddie. Players who wish to bring their own caddies to a cosponsored event shall so indicate at the time they commit to participate in such event and shall be responsible for the conduct and behavior of such caddies at such events.

* * * *

PGA TOUR
112 TPC Boulevard
Ponte Vedra Beach, Florida 32082
904-285-3700

[LOGO]

October 17, 1997

TO: PGA TOUR Tournament Association Members
SENIOR PGA TOUR Tournament Association
[Members]
NIKE TOUR Tournament Sponsors

FROM: W. William Calfee

RE: 1998 PGA TOUR Credentials

In 1998 PGA TOUR credentials will be color coded as follows: Blue, Red and Green. Since these color codes (blue, red & green) grant access to player areas, we ask each sponsoring organization to refrain from using these colors for credentials purposes during your tournament (i.e., corporate hospitality, patron hospitality, pro-am contestants, etc.) Your cooperation will be greatly appreciated. Listed below is a detailed description of each credential.

The following credentials will be color coded blue:

1. Membership

   A. 1998 PGA TOUR, Senior PGA TOUR and NIKE TOUR Member Money Clip (gold, rectangular, logo color coded blue);

   B. 1998 PGA TOUR Staff Money Clip (silver, rectangular, logo color coded blue);

   C. 1998 PGA TOUR Rules Official Money Clip (gold, square, logo color coded blue)

   D. 1998 PGA TOUR, SENIOR PGA TOUR and NIKE TOUR Contestant Badges (white, blue color bar with tournament's logo, plastic & rectangular).

   The above-listed credentials receive access to the following areas at PGA TOUR cosponsored or coordinated tournaments:

   1. Contestant Parking
   2. Contestant Locker Room
   3. All Clubhouse Areas (except Ladies Locker Room)
   4. Media Center (press room)
   5. Inside Ropes on Practice Areas
   6. Inside Ropes on Golf Course

2. Member's/Staff Ladies Credentials:

   A. 1998 PGA TOUR Member Ladies Pin (silver & gold, oval, logo color coded blue);

   B. 1998 PGA TOUR Staff Ladies Pin (silver, oval, logo color coded blue)

   C. 1998 NIKE Tour Ladies Pin (silver & gold, oval logo color coded blue)

   The above-listed credentials receive access to the following areas at PGA TOUR cosponsored or coordinated tournaments:

   1. Contestant Parking
   2. Ladies Locker Room
   3. All Clubhouse Areas (except contestant locker room)
   4. Player hospitality
   5. Media Center (press room)
   6. Golf Course (outside ropes)

3. Media - 1998 PGA TOUR Media badge (square shape, photo identification or media affiliate's logo, color coded blue)

   The above-listed credential receives access to the following areas at PGA TOUR cosponsored or coordinated tournaments:

   1. Media parking
   2. Contestant Locker Room (except during suspension of play)
   3. All Clubhouse Areas (ladies locker room only for females)
   4. Media Center (press room)
   5. Inside ropes on Practice Tee (during tournament week.)
   6. Golf Course (with special daily media credential during competitive round, provided not more than one arm length's away from ropes)

4. 1998 PGA TOUR Tournament Association, Senior PGA TOUR Tournament Association and NIKE TOUR Sponsor Badge (square shape, photo identification or tournament sponsor's logo, color code blue)

   The above-listed credentials receive access to the following areas at PGA TOUR cosponsored or coordinated tournaments:

   1. Preferred Parking (space available during tournament week)
   2. Contestant Locker Room (except during suspension of play)
   3. Clubhouse
   4. Practice Areas (only one tournament association member may be in the designated practice area at a time)

5. 1998 PGA TOUR Support (square shape, photo identification, color code blue)

   The following companies or individuals provide support to PGA TOUR cosponsored events on a weekly basis; PGA TOUR Productions Camera Crew, Darrell Survey, Special Event Productions, Tenet Healthcare, Keller Furniture Mobile Weather Team and Contract Score Board employees:

   The above-listed credentials receive access to the following areas at PGA TOUR cosponsored or coordinated tournaments:

   1. Clubhouse parking (all week)
   2. Contestant Locker Room (except during suspension of play)
   3. Golf Course (inside ropes)
   4. Media Center
   5. Practice Areas (inside ropes)
   6. Corporate Hospitality areas

6. PGA TOUR Golf Instructor badge (square shape, photo identification, color code blue)

   The above listed credential receives access to the following areas at PGA TOUR cosponsored or coordinated tournaments:

   1. Contestant Parking (space available)
   2. All Clubhouse Areas
   3. Locker room (except during suspension of play)
   4. Inside ropes on Practice Areas (only if accompanied by player)
   5. Inside ropes on Golf Course during practice rounds (only if accompanied by player)
   6. Outside ropes during pro-am and official competition

The following credential will be color coded red:

1. Manufacturers' badge (square shape, photo identification or manufacturer logo, color code red)

   The above-listed credential receives access to the following areas at PGA TOUR cosponsored or coordinated tournaments:

   1. Preferred parking (spaces available, practice & pro-am days only)
   2. Contestant locker room (practice & pro-am days only)
   3. Clubhouse area (during tournament week)
   4. Manufacturers will not be permitted on practice areas unless invited by a contestant with whom they have an appointment (practice & pro-am days only)
   5. Golf Course (outside ropes)

The following credential will be color coded green:

1. Player Manager badge (square shape, photo identification, color code green)

   The above listed credential receives access to the following areas at PGA TOUR cosponsored or coordinated tournaments:

   1. Preferred parking (space available, practice & pro-am days only)
   2. Contestant locker room (practice & pro-am days only)
   3. Clubhouse area (during tournament week)
   4. Grounds (during tournament week)

Caddie identification

A. 1998 PGA TOUR Caddie Identification Card (white, plastic & rectangular)

B. 1998 Professional Caddie Association Card (white, rectangular with photo ID on the back of laminated card)

The above listed credentials receive access to the following areas at PGA TOUR cosponsored or coordinated tournaments:

1. Caddie Parking
2. Inside ropes on practice areas (only if accompanied by a player)
3. Inside ropes on golf course (only if accompanied by a player)

* * * *

CONFIDENTIAL

MINUTES
OF
PGA TOUR POLICY BOARD

9:00 a.m., Tuesday, March 18
Buena Vista Palace
Orlando, Florida

* * * *

I. Approval of Minutes

* * * *

3. PGA TOUR Qualifying Tournament

Commissioner Finchem then reviewed with the Board the current status of The PGA TOUR Qualifying Tournament and asked the Board to consider several changes to improve the tournament.

The PGA TOUR Qualifying Tournament consists of three stages of competition. The first stage consists of 72 holes of stroke play at eleven sites. Approximately 78 contestants play at each first stage site. Successful qualifiers at this stage advance to the second qualifying stage which consists of 72 holes of play at six sites, again with 78 players at each location. Successful qualifiers at each second stage site advance to the final stage. The final stage consists of 180 players, plus international exemptions, competing over 108 holes on two courses.

The field at the final stage is reduced to the low 90 scorers plus ties after 72 holes. The low 40 scorers plus ties gain PGA TOUR membership.

The Commissioner stated that the TOUR's philosophy has always been to conduct the Qualifying Tournament in a manner that approximates a PGA TOUR event as closely as possible and that significant improvement had been made in the quality of the golf courses that are played at each stage. Additionally the same course setup guidelines

that are in place on the PGA TOUR are used for the Qualifying Tournament.

The Commissioner reported however, that the pace of play at the final stage had been a concern. With 188 players in the field, rounds at the final stage of this past year's Q-School ranged between five and six hours before the 72 hole cut and averaged about six hours after the cut. In an effort to improve the pace of play at finals, the Commissioner asked the Board to approve the following changes:

1. Reduce the field size at the final stage to 168 players including the international exemptions. To offset this reduction in field size, the alternates (three from each of the six second stage sites) that do not get into the finals would be given conditional NIKE TOUR cards.

2. Reduce the 72-hole cut from the low 90 and ties to the low 72 scores and ties which will significantly improve pace of play in the final two rounds by providing for some manageable number of players the last two rounds.

The Commissioner further reported that currently a play-off is conducted at the finals following conclusion of play on the final day to determine the 70th and last fully exempt NIKE TOUR player. Players who might be involved in the play-off are asked to stay for two additional days after missing the 72-hole cut. As an alternative, the Commissioner asked the Board to approve elimination of the play-off in favor of awarding exempt NIKE TOUR status to the top 70 players plus ties after the top 40 finishers and ties who earn PGA TOUR membership.

Commissioner Finchem reported that $150,000 in prize money had been distributed in each of the last four years (1993-1996) and that the purse had not been increased since 1993 when it was raised from $100,000 to $150,000 in conjunction with an increase in Q-School entry fees.

With Q-School revenues increasing over the last four years Commissioner Finchem stated he felt it appropriate to increase the purse from $150,000 to $300,000.

Finally, Commissioner Finchem recommended that the Board approve the elimination of carts at Q-School Finals to more accurately approximate conditions the qualifiers will encounter on the PGA TOUR.

After receiving input from the Player Directors, the recommended changes to the Qualifying Tournament were altered to raise the recommended purse increase to $500,000 instead of $300,000. Additionally, consideration will be give prior to ratification of capping the number of NIKE players earning exempt status as a result of eliminating the playoff for the 70th position.

On a motion by Mr. Love and a second by Mr. Haas, the board voted to approve the approve the following changes to Q-School:

1. Reduce the field size at the final stage to 168 including the international exemptions from 180 plus the international exemptions.
2. Reduce the 72-hole cut at the final stage to the low 72 scorers plus ties from the low 90 scorers plus ties.
3. Eliminate the play-off for the 70th NIKE TOUR position in favor of awarding exempt status to the top 70 finishers plus ties after the Top 40 finishers and ties who earn PGA TOUR membership.
4. Eliminate the use of carts at the final stage.
5. Increase the purse from $150,000 to $500,000 and change the distribution so that all players that survive the 72-hole cut at finals get paid.

* * * *

[Excerpt of the Rules of Golf of the Pacific-10 Conference]

* * * *

(1) <u>Cars, Carts, and Caddies</u>.

Participants may not use cars or carts to carry their clubs. An exception to this policy may be granted by a majority vote of the coaches if the individual is permamently disabled. A written request must be submitted to the Conference office with accompanying medical statements requesting the use of a car at least one week in advance of the Championships. Pull carts may be used under unusual circumstances, subject to approval of the Games Committee. Such request must be made at least one week in advance of the Championships. Caddies may not be used. (5/73, 8/84, 6/90, 6/94)

* * * *

NOTICE TO COMPETITORS
1997 Bob Hope Chrysler Classic
January 15-19, 1997

THIS INFORMATION SUPPLEMENTS THE PGA TOUR CONDITIONS OF COMPETITION AND LOCAL RULES

PRO-AM ONLY

Team Net Best Ball. When unable to assist their pro-am team score, amateurs shall pick up their ball. (Par is *NOT* your partner!)

OUT OF BOUNDS:

Out of bounds is defined by white stakes and/or white stakes with red tops and where tying into inside edge of street curbings, walls, chain link or green web fences. A ball coming to rest beyond this boundary is out of bounds, even though it may be in the playing area of another hole.

PRACTICE: PERMITTED ON THE DRIVING RANGE BETWEEN HOLES #9 & 10; AND HOLES 18 & 1.

Practice will be permitted on the driving range at all courses between the play of Holes #9 and 10 and also between the play of Holes #18 and 1, should there be a delay at the turn. Practice is permitted on the driving range provided there is no undue delay.

PRACTICE AT PUTTING GREEN OF HOLE PLAYED PROHIBITED

Practice at putting green of Hole played is prohibited for all five rounds. See appendix I of Rules of Golf.

INDIAN WELLS:

Hole #5 & 6: Snow fence behind #5 green and to the right of Hole #6 is a temporary immovable obstruction.

TRANSPORTATION: INDIAN RIDGE ONLY!

Players at Indian Ridge are permitted to ride between the putting green of the last hole played to the next teeing ground.

PGA TOUR RULES COMMITTEE
Steve Carman
Orlando Pope
Perry Williams

NOTICE TO COMPETITORS
1997 AT&T PEBBLE BEACH NATIONAL PRO-AM

This supplements the Local Rules and Conditions of Competitions for PGA TOUR.

FORMAT

Pro-Am - Four ball stroke play - see Rule 31.

Scoring – The marker is required to record for each hole only the gross score of whichever partner's score is to count. The gross scores to count must be individually identifiable; otherwise, the side shall be disqualified. Only one of the partners need to be responsible for complying with Rule 6-6b.

Professional Only – stroke play.

TEEING GROUNDS

Professionals players shall start play on each hole from teeing grounds defined by blue tee-markers. Amateur players shall start play on each hole from teeing grounds defined by white tee-markers.

PACE OF PLAY

In order that play is at reasonable pace, amateur players are requested to pick up when they cannot help their side's net or gross score. PGA TOUR Pace of Play Guidelines shall be in effect.

OUT OF BOUNDS

Defined by white stakes and when white stakes tie into them, fences, walls, the inside edge of roads and at hole #12 at Poppy Hills, the right curb of the cart path.

SPYGLASS HILL-BUNKER HOLE #4

The bunker encircled with a white line, located at the left back side of the green is classified as "through the green" and is ground under repair.

LOWER PUTTING GREEN ON HOLE #2 AT POPPY HILLS

The lower putting green is a wrong putting green – See Rule 25-3.

SHUTTLE AT POPPY HILLS

Players are permitted to ride between hole #'s nine and ten.

BALL DROP AREAS ON HOLE #18 AT PEBBLE BEACH

As an addition option under Rule 26-1, a ball in the lateral water hazard may be dropped under penalty of one stroke on the nearest area marked "Ball Drop" that is not nearer the hole than where the ball last crossed the margin of the lateral water hazard. There are four "Ball Drops" located alongside the fairway bunker.

SEAWALL HOLE #18 AT PEBBLE BEACH

The right side of the wall is an immovable obstruction. The margin of the lateral water hazard is defined by red dots on the top of the wall.

PGA TOUR RULES COMMITTEE

NOTICE TO COMPETITORS

1997 QUAD CITY CLASSIC

This information supplements the PGA TOUR RULES OF PLAY.

OUT OF BOUNDS – Defined by white stakes and where applicable white stakes tying into snow fencing and green web fencing.

The Driving Range is out of bounds. Defined by white stakes and where applicable white stakes tying into chain link fencing, snow fencing and green web fencing.

FLOWER BEDS – are ground under repair. Defined by wooden ties, black plastic or the cut of the ground.

AUTOMOTIVE TRANSPORATION – Competitors are permitted to use Automotive Transportaion during play of Hole #12.

PGA TOUR RULES COMMITTEE

* Do not put a white line around the TV Compound!

[Excerpt of the 1998 PGA TOUR Official Media Guide of the PGA TOUR]

ALL-EXEMPT TOUR PRIORITY RANKINGS

Each PGA TOUR player has earned a position on the priority ranking system that will be used to select tournament fields. The complete ranking system, in order of priority, is as follows:

* * * *

16. Four low scorers at Open Qualifying, which shall normally be held on Monday of tournament week.

* * * *

APPLICATION TO ENTER
1997 PGA TOUR QUALIFYING TOURNAMENT
(FOR PGA TOUR AND NIKE TOUR)

[Logo] CONDUCTED BY THE PGA TOUR [Logo]

First Qualifying Stage (72 Holes Scheduled)
Second Qualifying Stage (72 Holes Scheduled)
Final Qualifying Stage (108) Holes Scheduled)

* * * *

II. PGA TOUR MEMBERSHIP

PGA TOUR memberships for 1998 will be awarded to the lowest 35 finishers and any tying for 35th position after the conclusion of play in the Final Qualifying Stage.

* * * *

V. ENTRY FEES; CLOSING DATE

ENTRY APPLICATIONS MUST REACH PGA TOUR HEADQUARTERS BY 5:00 P.M. EDT ON FRIDAY, SEPTEMBER 26, 1997. NO FACSIMILE APPLICATIONS WILL BE ACCEPTED.

ALL APPLICANTS MUST ENTER BY THE ENTRY DEADLINE OF SEPTEMBER 26, 1997, WITHOUT EXCEPTION.

Subsequent to and based upon final results of the NIKE TOUR Championship, some exemptions into the Second Qualifying Stage will be earned. Such applicants will be refunded $250 and their entry will be adjusted.

A. Applicants required to play in the FIRST QUALIFYING STAGE: $3000

B. Applicant required to play in the SECOND QUALIFYING STAGE: $2,750

C. Applicants required to play in the FINAL QUALIFYING STAGE: $2,500

NOTE: Entry fees for First and Second Qualifying Stages includes greens fees, practice balls and, if applicable, half of an 18-hole golf cart on each day beginning at noon two days before and during every day of competition. Entry fee for Final Qualifying Stage includes greens fees and practice balls beginning two days before and during every day of competition. Use of golf carts is prohibited at the Final Qualifying Stage; players are required to use caddies.

* * * *

CADDIES/GOLF CARTS

A caddie and/or golf cart is required during all practice and tournament rounds of the First and Second Qualifying Stages. No more than two carts will be allowed per grouping. The player may designate an individual to serve as a caddie and drive a cart for him. Caddies are required to wear long pants while on property. Use of golf carts is prohibited during the Final Qualifying Stage. Players are required to use caddies.

* * * *

TRANSCRIPT OF PROCEEDINGS

DEPOSITION OF RICHARD HILLS
January 4, 1998

* * * *

Q. As assistant executive director of the PGA European Tour, Mr. Hills, are you familiar with the tournament rules and regulations that apply to PGA European Tour events?

A. Yes, I'm familiar with the local rules as currently active on the PGA European Tour.

Q. Could you explain to us briefly for the record, if you will, Mr. Hills, exactly what kinds of competitions the PGA European Tour sponsors or promotes?

A. The PGA European Tour is the sanctioning body of tournament professional golf in Western Europe. It conducts a series of events throughout Europe, some 37 in 1997 which are predominantly 72-hole stroke events.

* * * *

Q. Mr. Hills, does the PGA European Tour have a rule prohibiting use of golf carts in its competitions?

A. Yes, we have a local rule

* * * *

DEPOSITION OF BRIAN KENNETH GRANT ALLAN
January 4, 1998

* * * *

Q. Have members of the Australasia tour, sir, ever been permitted to use carts during the tournament play itself?

A. No.

Q. Would you tell us for the record, sir, what the reason is that the Australasia tour has a rule prohibiting the use of golf carts by competitors during the course of its competitions?

A. Well, at this level of golf an integral part is the athletic ability to be able to walk 72 holes of a golf course and play, maintain your position in the field.

Q. Is it your opinion, sir, that players on the Australasia tour if some players were permitted to use a golf cart and others were not, that the players who were permitted to use a golf cart would have an advantage over the other players?

A. Simply, yes, they would. It's physically less demanding to ride.

* * * *

DEPOSITION OF ARNOLD MENTZ
January 4, 1998

* * * *

Q. Now, Mr. Mentz, as commissioner of the PGA Tour of Southern Africa are you aware of the rules that apply to competitions of your tournament?

A. Yes, sir.

Q. Does the PGA Tour of Southern Africa, sir, have a rule relating to the use of golf carts in its competitions? Just answer "yes" or "no."

A. Yes.

Q. And does that rule prohibit the use of golf carts?

A. Yes.

* * * *

Q. Now, Mr. Mentz, are you aware, sir, of the reason why the PGA Tour of South Africa prohibits the use of motorized carts in its. professional competitions?

A. Yes, sir.

Q. What is the reason?

A. The reason is that it's an unfair advantage to anybody using a cart playing in a tournament against the other players.

Q. Why does the PGA Tour of Southern Africa consider it an unfair advantage for a competitor to use a golf cart in its competitions?

A. Because the integral bond of golf and professional golf is to walk the 18 holes and play in a tournament.

* * * *

Q. Are players in tournaments on the PGA Tour of Southern Africa ever permitted to use carts during the course of play itself?

A. Not at all.

* * * *

Q. Do you prefer to use a cart if given the opportunity?

A. No, ma'am.

Q. Excuse me?

A. No, I don't.

Q. Why is that?

A. Because I have problems in judging my distances. By walking the golf course you get a more feel of the golf course and the shots to play, where in a golf cart you miss that feeling in playing the game.

* * * *

VIDEOTAPED DEPOSITION OF SCOTT VERPLANK
January 12, 1998

* * * *

Q. Have you, Mr. Verplank, retained exempt status on the PGA Tour at all times since you became a professional in 1986?

A.No, I haven't. I've, um, had a series of ups and downs, to be honest with you, and most of them had to do with physical problems. And I can really only think of one year where I really just didn't play very good and didn't retain my status.

But the rest of the time it was all from different physical problems, elbow surgeries and stuff of that nature.

Q. Tell the court, if you would Mr. Verplank, what kinds of physical difficulties you've had over the course of your professional career.

A. Well, as far as my career goes, you know, as far as actually playing golf, I've had three different elbow surgeries, two on my right elbow and one on my left . And they were—they were different problems, but, you know, related to playing golf, more or less.

And then on top of that, I'm diabetic. And I've been diabetic since I was 9 years old. I'm 33 now, so that's 24 years.

Q. How does the fact that you have diabetes affect you in terms of your physical performance as a golfer?

A. Well, um, you know, most guys come out here and they prepare themselves hitting balls and chipping and putting and working on their game, getting all that. And that's going to go a long way towards determining how they play. I'm a little different in the fact that my number one priority is how do I feel and is my health—is my diabetic condition conducive to me being able to perform.

And if it's not, I usually don't perform very well. If I'm feeling good and feeling strong, and, you know, have lots of

energy and everything is going okay, my chances of playing up—or playing good go up significantly.

Q. Okay. And has your diabetes, from time to time since you became a professional, affected your level of performance at various times?

A. Oh, yeah. I mean—yeah. It really affects it every time I play because it's either going to be I'm feeling good and I got my chance to play good, or if I'm feeling bad, my chances of playing very well aren't very good.

* * * *

To what extent does fatigue affect the level of performance of professional golfers at the PGA Tour and Nike Tour level?

A. I—you know, a lot it depends on the conditions, the golf course you're on, the weather and all that. But in some instances it's the—it's the—really, maybe the most important factor. I mean, if you're playing in the middle of the summer on a hilly golf course and it's 98 degrees, I mean, you're doing all you can do to keep from running out of juice. I mean, whether that's—you know, I would assume it's the same for everybody.

* * * *

Q. And explain to the court, if you would, Mr. Verplank, how fatigue affects the performance of a golfer at the level of competition that we're talking about.

A. Well, um, technically, if your body is tired, your muscles are tired, you know, not performing well, you're not going to be able to swing the golf club and perform the kind of golf shots that you need. You know, you might lose a little distance. Or if you don't hit the ball solid, which is, you know, a big difference between amateur golfers and us. You know, our tour is about hitting the ball solid.

And if you can hit the ball solid when you're tired then, you know, that's kind—sometimes it's kind of a luck factor if you're that tired. But it makes a big difference. I mean, if you—you need to be feeling normal, you know, a little bit hyped up, feeling strong and all that to feel like you can play to your best ability.

Q. Does fatigue during the course of a golf tournament, Mr . Verplank, sometimes affect the accuracy with which you hit a shot?

A. There's no question. I was kind of saying that a minute ago, but I kind of stopped. If you're tired—you know, personally, for me—I know every golfer is different every person is different. But if I'm tired, I will generally not be able to hit the ball as straight and as accurately, because if my muscles aren't working as good, you know, your timing gets off.

* * * *

Q. Let me make sure I understand, Mr. Verplank. When you went over to the PGA Tour office during the course of the 1997 National Qualifying Tournament after you had heard that the court had entered an injunction permitting Casey Martin to use a golf cart in the course of that competition, you told the tour personnel that you spoke with that you didn't think that was fair?

A. Exactly. I told them it wasn't fair.

Q. And tell the court, if you would, sir, what you meant when you told them that it wasn't fair.

A. Because it was an advantage to ride in a golf cart.

* * * *

Q. Why is it an advantage to ride in a golf cart, sir?

A. The fatigue—the fatique factor alone. But I think there's other advantages, too. But I told the officials there, I said, "This is a marathon as much as anything."

I said, "It's a long golf tournament."

I said, "It's a taxing golf tournament. It's the most"—you know, "one of the most stressful events in most people's life to play in that because it's basically you're—what you're going to get to do for the next 12 months."

And I said, "You just—you can't give a kid one up on the first tee that he doesn't have to walk and everybody else does, because"—

I said, "If I could ride the first four—you know, the first two rounds, then I'm going to be a lot less tired on rounds 5 and 6."

It's a long tournament—I mean, it's a long tournament. I mean, it's a long week, and if you haven't ever done it, then you really don't even know how hard it—how tiring and taxing it is.

But I just said, "You just can't do that." I said, "The young man would have a huge advantage getting to ride."

* * * *

Well, anyway, so I just felt as though it was a long tournament; there would be a big advantage to be able to ride if everybody else had to walk, just from the physical conditioning and fatigue and stamina standpoint of the whole thing.

* * * *

Q. And so in order to make it fair for all the competitors in the National Qualifying Tournament, they permitted you and the others to use a golf cart if you wished?

A. Yes, sir.

Q. Now, you have—you have indicated, Mr. Verplank, that you were the winner of the National Qualifying Tournament. Would you tell the court whether and to what extent the use of a golf cart, in your view, assisted you during the course of that competition?

A. Well, um, I—I felt like that if I could ride some—maybe not even the whole tournament—some, that I would

be less tired come the last two rounds—you know, last two, three rounds of the tournament.

And just from a strictly fatigue—you know, stamina standpoint, I just figured that I'd feel a lot better near the end of the week if I could ride some in the first, and it wasn't so hard on me.

You know, and I—and to be honest with you, I rode the first day and played pretty good. I was leading after the first day. Rode the second day, and then had a huge lead after two days, and I said well—you know, being a typical golfer, I'm not gonna change anything. So I rode the whole week, felt great, never got tired.

* * * *

Q. Now, Mr. Verplank, am I correct, sir, that in all the years that you've been on the PGA Tour—approximately, I guess, 12 years, now, that you've been a PGA Tour member—it has always been the rule that competitors in PGA Tour Competitions must walk and are not permitted to ride?

A. Yeah, it has. It's a fundamental part of the—of playing golf on the PGA Tour.

Q. Explain to the court what you mean, sir, when you say that walking is a fundamental part of playing golf on the PGA Tour.

A. Well, because the PGA Tour is the highest level of golf on earth, now—at least in this country. And, um, you—it's always been about the physical—you know, the physical ability to get the golf ball into the hole. And walking has always been a part of that. You know, that's—I mean, that dictates the pace of play, your rhythm, your—you know, your breathing, your nervousness, your timing, all that. I mean, it affects all that.

* * * *

Q. Now, Mr. Verplank, based on your experience as a member of the PGA Tour, sir, do you have an opinion as to whether or not it would fundamentally alter the nature of the

competition on the PGA Tour or the Nike Tour if competitors in those events were permitted to use golf carts?

A. Well, yeah. I don't—you know, it would change the game. There's no question about it. It would change the competition, particularly if—if some people could and other people couldn't. It would just—it would make a difference. It would make an advantage. That's why I rode at the tour school, because I felt like I had—now I felt like two of us had one up on the first tee. And that's why I didn't understand why everybody else didn't ride.

* * * *

Q. Is it important, sir, that all of the competitors in a professional golf competition adhere to the same set of rules of competition?

A. Absolutely.

Q. Why is that important?

A. Well, it wouldn't be fair if you didn't. I mean, that's the whole—that's the whole premise of golf, is everybody starts equal; everybody's the same; everybody has the same rules to play by, same equipment.

You know, we have equipment standards out here that everybody has to—their equipment has to fall within just so nobody has an unfair advantage. And the only advantage you can get is how good can you play.

* * * *

DEPOSITION OF ARNOLD D. PALMER
January 12, 1998

* * * *

Q. Mr. Palmer, based on your knowledge and experience, and also based on your involvement in the original formation of the PGA Tour, would you tell the court what the reason is that the PGA Tour has a rule banning the use of golf carts in its competitions?

A. Well, of course, my feelings are fairly strong that the game is a physical game. And if you take—if the person isn't walking, then you're taking some of the physicalness out of the game. And conditioning and being in shape, like in any other sport, is part of the competition. And to be competitive, I feel that you have to be in good physical condition to excel or to be the best player. And the best players are the guys that are in the best condition.

* * * *

Q. When you say, Mr. Palmer, that walking the course is a part of the game, tell the court, if you would, precisely what it is that you mean.

A. Well, when you—when the game started, people—everybody walked. There was no other forms of transportation. There was no forms of transportation. And walking and playing the game—you had to walk. And that was part of the tradition of the game, tc walk and play.

I'm not sure that I can say much more than the fact that being competitive and being able to play the game was part of the whole thing. And that is walking.

Q. Now, Mr. Palmer, you also indicated that conditioning and physical fitness is a part of the game. Is it correct, sir, that fatigue by a golfer is one of the factors that affects a golfer's play during a tournament event.

A. There is no question about the fact that fatigue does play a very important part in the game of golf, both physically as well as mentally.

Q. Explain to the court, if you would, Mr. Palmer, briefly, how fatigue becomes a factor in tournament golf at the PGA Tour level.

A. Well I think its like anything else. Once you're fatigued, your thought processes are not as sharp as they are—I can say from my own personal point of view and having played professionally for 43 years, that when I get tired, I don't think as well on the golf course as I do when I'm sharp.

And, obviously, I'm pretty sharp when I start a day and by the time I end the day, if I'm not in good shape, it's a telling situation. As my father once said, the game of golf is a game that is played a great deal from your shoulders up.

* * * *

Q. Now, Mr. Palmer, we've talked about fatigue as a factor in professional tournament golf at the PGA Tour level. If a player—in your experience, Mr. Palmer, if a player were able to reduce fatigue during the course of a 72-hole round or even a single round of 18 holes by use of a golf cart, in your opinion, sir, would that provide that player with a competitive advantage over the players that were not permitted to ride in golf carts?

A. Absolutely.

Q. Why, Mr. Palmer, would the use of a golf cart by a player in PGA Tour competition provide a competitive advantage to that player over players who were not permitted to use golf carts?

A. Well, it's very simple. A man walking is using energy constantly as he walks. Sitting in a golf cart is a pretty relaxing way to go around a golf course, and you would probably keep a lot more of the stamina you have by riding versus walking.

Q. Mr. Palmer, as I understand it, in the—in the normal 18-hole round of golf at the tournament level, a player who

walks walks approximately 4 to 5 miles. Is that your understanding?

A.That is correct.

* * * *

Q. In your opinion, Mr. Palmer, is professional golf at the PGA Tour level one in which walking the course is a fundamental aspect of that game at that level of competition?

A. Absolutely. That's a part of what we look to when we start playing.

Q. And why is it fundamental to the game of golf at that level of competition, Mr. Palmer?

A. Well, again, because of your—part of the game is the physical fitness that you have built into your body so that you can compete at that level.

* * * *

Q. Mr. Palmer, you told us at the outset that you have played professional tournament golf at the highest levels, not just on the PGA Tour, but in professional tournaments around the world.

Do you know of any professional golf organization around the world that puts on championship competitions at the level of the PGA Tour that permits competitors in those events to use golf carts—

A. I do not—

Q. —during the courts of the competition?

A. —no.

* * * *

Q. Mr. Palmer, in your opinion, based on your experience, and particularly based on your involvement in the formation of the PGA Tour in the late 1960s, would the use of golf carts in PGA Tour competitions alter the nature of the game of golf at that level of competition?

A. Yes.

Q. Why do you say that, sir?

A. Well, because it would take the physicalness out of the game. And I think that is what—part of the tradition, integrity of the game.

Q. Now, Mr. Palmer, just a few more questions.

You've talked, Mr. Palmer, about the integrity of the game and you've indicated that in your opinion, the use of a golf cart would alter the integrity of the game at the level of the PGA Tour.

In your opinion, Mr. Palmer, would the use of a golf cart on the PGA Tour by one competitor or some competitors but not others, provide a competitive advantage to the competitors that used the golf cart in those tournament events?

A. No question about it.

Q. Why do you say that, sir?

A. Well, again, he would be—he could stay far more alert and avoid fatigue that naturally happens with exercise and walking. So it would be definitely an advantage to ride a golf cart.

Q. In your experience, Mr. Palmer, can cause fatigue be the factor in losing just one stroke during the course of a round?

A. If you lose one stroke for whatever the reason, it's—it's a bad—I've lost a lot of open championships by one stroke.

* * * *

Q.And is fatigue one of the factors that can cause a golfer at the PGA Tour level to lose one stroke or more?

A.Oh, it is. And it has happened.

Q.And can one stroke be the difference between winning and not winning a tournament at the PGA Tour level?

A.As I said, I've lost a few national opens by one stroke.

* * * *

Q. You don't know anything about his medical condition because you have not been provided with any of his medical records?

A. That's right.

Q. And the tape that I requested that you see of his condition was never shown to you?

A. That's right.

* * * *

Q. And to your knowledge, sir, has the PGA Tour in PGA Tour events ever made an exception to allow a competitor to use a golf court during a round of golf?

A. Not to my knowledge.

Q. Is it the case, Mr. Palmer, that golfers, from time to time, have had physical disabilities of one kind or another that have prevented them from playing a round of golf?

A.That is correct.

Q.And do you know of any instance, Mr. Palmer, where the PGA Tour has made an exception to its rule prohibiting carts so as to allow a competitor with a physical disability or infirmity to continue to play?

A. I do not know of any.

* * * *

Q. If golf carts were to be used by some competitors in PGA Tour events, Mr. Palmer, is it your testimony that that would change, fundamentally, the nature of the game at that level competition?

A. Absolutely.

* * * *

Q. Why would the use of golf carts by some competitors at the PGA Tour level of competition fundamentally alter the nature of the game at that level?

A. Well, I think that it would be definitely giving those people who are riding an advantage, and that would certainly alter the nature of the tour.

VIDEOTAPED DEPOSITION OF GERRY NORQUIST
January 12, 1998

* * * *

Q. All right. Let's take the use of a cart, first, before we get into walking. They're kind of intertwined, but it's easier, perhaps, to understand the difference.

First of all, what is your preference with respect to your play? If you were given an option to use a cart or walk, which would you take?

A. I, personally, would rather walk.

Q. And in connection with tournaments that you have played in where that option has been given to the players, have the majority of them walked?

* * * *

A. In my recollection, the majority of the tournaments I've played in where the option has been given, most players have walked.

Q. Okay. now, assuming that there were 168 players in this year's final and that they were given the—final qualifying school, and that they were given the option to ride if they would like, and that 20 or less used carts and the remainder of the field walked, do you have an opinion, based upon those statistics, as to whether or not the preference, generally, of professional golfers like you is to walk?

* * * *

A. I do have an opinion. The opinion, to me, is—and knowing other players that I play with on a daily basis, is about that percentage would say they would like to walk as opposed to riding a cart.

* * * *

Q. Okay. Is there any advantage—or disadvantage, rather, in determining the amount of wetness in the soil, how that might affect your next shot or the shots to come?

A. Yeah, I think when you're walking, you get a better feel for the golf course itself, you get a better feel for the ground conditions. As opposed to driving a cart, you'll get a better feel that way.

* * * *

Q. Okay. Is it—do you lose any type of relationship with the course by riding as opposed to walking?

A. My opinion is that you do, but I suppose—you could get used to it, but I just—inherent for me in playing the game has always been getting a feel for—for what I'm doing. And walking is, to me, part of that. I feel it, and I would rather walk.

It's—it's hard to explain. It's hard to be quantitative on it. it's just a feeling that I have.

Q. Sure. Now, in connection with your opinion and your statement about the fact that there are advantages to walking a course as opposed to riding, how about your blood circulation or circulation by walking as opposed to riding? Is there any—is that a factor in this?

* * * *

A. I would—for me, it's as—walking is—is fairly—it's not a huge aerobic exercise, by any means, but it does help me, I believe, when I walk to the ball, to get the blood circulating a little bit and to keep a little warmer, possibly. And I think it helps me from that standpoint. It keeps me looser.

* * * *

A. With what I know of Casey's situation—and I most recently had a chance to play with him in a practice round for the Long Beach Open in July of this year—oh, excuse me, of the past year, 1997, I find it hard to believe that anyone could do anything to give Casey a competitive advantage over me, personally. And I can only think of myself. I don't believe

Casey is able enough to have a competitive advantage over me because he's at such a disability.

So to me, riding in a cart—if Casey is riding in a cart, I don't consider that he's going to have an advantage over me. It's not going to make him a better player than me if he isn't already.

Q. Okay. Is he at a disadvantage as to you physically at the outset of the round without a cart?

A. Oh, there's no question. No question about it.

Q. What type of ground does he have the most difficulty handling? Is it the slope next to the green, or is it coming off the tee box, or what?

A. Again—that's probably a question you'd have to ask Casey. But as I observe him, any time Casey is on an other-then-level lie, he's got a challenge. Because golf is a game where you have to distribute weight, you have to transfer weight. And when Casey has to transfer his weight back to his right side, he's at disadvantage there because he doesn't have a strong enough leg to handle that.

Q. Okay. Can you think of any other aspect of the cart/Casey situation where it would be any way that it could be considered to be advantageous, knowing his condition as you do, having played with him 30 to 50 rounds?

A. That it could be advantageous?

Q. Yeah, to him as opposed to you. You've already indicated that it wasn't from the outset, but is there any other factor that would be important in this?

A. In my opinion, as it relates to Casey, no.

* * * *

Q. One of the—the factors that affects a professional golfer during the course of a tournament is fatigue, is it not, Mr. Norquist?

A. There are certain cases where fatigue certainly comes into play.

Q. Well, isn't fatigue a factor in every round of golf at the professional level to some extent or another?

A. Yeah, probably. There's mental fatigue and physical fatigue.

Q. Let's talk about physical fatigue for a moment and then we'll touch upon mental fatigue.

You would agree with me, would you not, that physical fatigue is a factor, to one extent or another, in every round of golf at the competitive level?

A. To one extent or another, I'd agree with that statement.

Q. And you would agree with, me would you not, Mr. Norquist, that fatigue can have an effect on how accurately you hit a shot?

A. Yeah, I'd agree with that.

Q. And you would agree with me that fatigue can have an effect on how far you hit a shot?

A. I would agree with that.

* * * *

Q. Now, I think you said—and correct me if I'm wrong—but I think you said that in the normal situation involving two able-bodied golfers in a professional tournament, the one who is permitted to use a golf cart would have an advantage over the other player.

A. I would say if—there were certain circumstances where, if player A and player B, being of able body were, in certain circumstances, the player who used the cart could have an advantage over the player who didn't use the cart. And on the other side of the coin, I believe strongly that there would also be possibilities where that could flip-side.

Q. Let's talk about the situation, Mr. Norquist, where the competitor that is permitted to use a golf cart, in your view, has an advantage over the competitor that does not have the

cart. You would agree with me, would you not, that one of the competitive advantages would be reduction of fatigue that a golfer otherwise experiences over the course of a full round of golf?

A. Potentially, yes.

* * * *

DEPOSITION OF W. WILLIAM CALFEE
January 13, 1998

* * * *

Q. What requirement is that?

A. Required to send us, I believe, two letters stating that he is competitive and—from a PGA professional that he Ia competitive and can, you know, play to a level that he thinks would allow him to earn a card.

Q. Has anyone ever been turned down because they didn't have a sufficient letter from a PGA professional?

MR. MALEDON: You mean for entry into the qualifying tournament?

MR. WALTERS: Yes.

THE WITNESS: I don't believe so, but I don't know.

* * * *

DEPOSITION OF TIMOTHY W. FINCHEM

January 13, 1998

* * * *

Q. Do you assume that it Is a disadvantage to Mr. Martin to not be able to use a cart?

THE WITNESS:I accept my understanding of medical situation and, again, I have not studied it as yet—is that short of using a cart, he is unable to compete in a multi-day tournament. So I—if that is in fact his position, I wouldn't argue with it. I would assume that that is in fact the case.

Q. And you would assume that—and, therefore, it would be a disadvatage?

* * * *

THE WITNESS: That it would be a disadvantage to him if he was forced to play without a cart, given that his medical situation might result in him being unable to finish 18 holes? Absolutely, it would be a disadvantage.

* * * *

DEPOSITION OF JAMES RAY WEBB
January 19, 1998

* * * *

Q. Are you aware, sir, as the Deputy Commissioner of the LPGA, why the LPGA requires walking in its competitions?

A. Yes, I am.

Q. What is that reason?

A. Because we feel like the walking is a part of the tradition of the game, and it's an essential or integral part of the competition that, you know, at a professional level that we're competing in on the tour.

Q. When you say that walking is an integral part of the competitions at the LPGA, what do you mean by that, sir?

A. I mean it is a part of the competition that we elect to make a part of our competitions on the LPGA tour, and I think that it requires a player to have the stamina and the strength to be able to deal with the elements that—whether it be a hilly course or flat course or what.

* * * *

DEPOSITION OF KERRY JOHN HAIGH
January 20, 1998

* * * *

Q. Is it correct, Mr. Haigh, that the PGA of America rule that prohibits golf carts in competitions are found in the hard cards distributed before the tournaments?

A. Yes.

Q. Mr. Haigh, can you explain to us why the PGA of America prohibits golf carts in the PGA Championship, the Ryder Cup competition, and the Grand Slam competition?

* * * *

A. The reason that we prohibit golf carts, or the reasons I think, one, is it has always been that way, and the reason—second reason is that from a fairness standpoint, that by the Rules of Golf, players should all be treated the same, and under the rules, the Appendix I, one of the rules that we have implemented in the past and currently implement is that golf carts are not allowed.

* * * *

Q.Is it true, sir, that the PGA of America has decided that walking should be part of these three competitions?

A.Walking has always been a part of the PGA Championship, as I stated, and continues to be so.

DEPOSITION OF STEVEN JAMES NOSLER
January 26,-1998

* * * *

Q. Your position is that Mr. Martin compared to an able-bodied golfer is at a physical disadvantage at the very start, correct?

A. Yes.

* * * *

DEPOSITION OF JACK NICKLAUS
January 27, 1998

* * * *

Q. Now, Mr. Nicklaus, let me ask you, based on your experience as a professional golfer over all of these years, to what extent does fatigue and stress enter into the elements that affect a professional golfer during the course of tournament golf?

A. Well, in my opinion, it enters up—enters into it a lot. I think that playing the game of golf, uh, is a game that requires physical stamina, being in condition, being able to play, being able to handle the stressful situations, and at the end of a tournament, uh, having those elements, being able to handle those elements and still be able to perform the golf shots.

* * * *

Q. Tell the court why you believe that a golfer who is permitted to use a golf cart would have an advantage on the PGA Tour over a golfer who is not permitted to use a golf cart.

A. Well, I think that the cumulation of stress, the cumulation of fatigue, the cumulation of the weather factors—put 'em altogether, and if you're sitting in a golf cart and you can ride from one place to the next, to the next shot, and have the rest between the shots, and you can—and, you know, stress, stress and fatigue destroy concentration, too. I mean, you know, you've got to concentrate on what you're doing, and that—and concentration takes a lot of energy. And when you're not expending energy, you know, walking and moving through a golf course, you—tends to destroy your concentration also.

* * * *

Q. In any of those events in which you have participated, Mr. Nicklaus, has the rule always been in those events that the competitors are required to walk?

A. Yes.

Q. Mr. Nicklaus, what is your understanding of the reason why in these competitive events, such as the PGA Tour events that you've participated in and the other ones we've mentioned, such as the U.S. Open, the Masters, the British Open, the PGA Championship and others, that competitors are required to walk the course?

* * * *

A. Well, in my opinion, physical fitness and fatigue are part of the game of golf.

* * * *

Q. Would you agree with me, Mr. Nicklaus, that professional golfers all bring different physical attributes to the game of tournament golf at the start of a tournament?

A. Absolutely.

Q. Now, you yourself indicated, Mr. Nicklaus, that you engage in some measure of physical conditioning. Do you do that regularly?

A. I do it regularly.

Q. Why do you do that?

A. So I have the ability to compete. So that my legs will stay in shape, so the rest of my body will stay in shape, so I have a cardio system that will stay in shape, so that I can—so that I can compete, so I don't fatigue, so that I can handle the stress of playing tournament golf.

Q. So part of the reason that you engage in physical conditioning is to combat the effects of fatigue that are a natural part of tournament golf competition?

A. That's part of it. And also, I have a degenerative hip, and I've got very significant bone spurs and growths on my right foot, which the combination of the two of 'em mount up to cause me a lot of fatigue by the end of a tournament, by the end of a round.

And I am still playing some on the regular tour and some on the Senior Tour, and if I wish to compete on the regular

tour, then I've got to stay in shape to be able to try to compete.

* * * *

Q. Do any of the opinions that you've given about fatigue and advantage of using a cart in order to eliminate the—or at least reduce the amount of fatigue in competing with other competitors, do your answers, your opinions you've given to Mr. Maledon, do they relate at all to Mr. Martin?

A. No.

Q. Okay. Now, so are you saying that you do not have an opinion as to whether Mr. Martin would be at a competitive advantage if he were provided a cart?

A. I'm saying I don't—I didn't think that, uh—the issue is—you're talking about Mr. Martin. I was talking about the game of golf in general.

* * * *

DEPOSITION OF WILL F. NICHOLSON, JR.
January 27, 1998

* * * *

Q. Now, based on your involvement with Augusta National and the Masters golf tournament, and particularly your service as chairman of the Rules Committee of Augusta National, did you come to learn, sir, what the reason is that Augusta National has prohibited the use of automotive transportation by competitors during the Masters golf tournament and instead has required competitors to walk?

* * * *

A. We believe very strongly, in a championship such as the Masters Tournament, which is golf at its very highest level, it's—the purpose is to test, under 72 holes, the skills of the competitors in that event; it's to test their ability to make shots; it's to test their ability under stress and fatigue; also to test their ability to execute shots under the physical and mental conditions that may happen; also to do it under the conditions of weather that may present themselves. It's an integral part of the test. And the key is to have everyone tee off on the first hole under exactly the same conditions and all of them be tested over that 72-hole event under the conditions that exist during those four days of the event.

* * * *

To what extent, sir, is the element of fatigue and stress as you've described it a factor that is an essential part of the competition at the Masters Tournament?

A. Oh, I think, with specific reference to the golf course in Augusta, the element of fatigue is one that becomes very apparent. Because although it may not look like it, there's a lot of hills and you go up and down, and if you're constantly going up and down and regaining—and losing and then regaining altitude, there is a significant amount of fatigue factor that may come upon someone during walking those 72 holes that may affect the swing of the golf club on the last couple holes, may make the difference between winning and coming in second, third or fourth.

VIDEOTAPED DEPOSITION OF
FRANK WILSON JOBE, M.D.
January 28, 1998

* * * *

Q. Would you explain to the Court the extent to which you engage in consulting with and advising, athletes regarding physical condition and fitness.

A. I'm considered the team orthopedist, consultant, for a number of teams. The major—excuse me—the major two areas that I work in are with the baseball Dodgers, and with the PGA Tour, golfers, and then I also advise the Angels and the Ducks, that's hockey, and the Kings, hockey, and the Lakers, basketball, at this time.

* * * *

Q. Now, Doctor, would you agree with me that in virtually any athletic competition, particularly those that you are familiar with that you had mentioned such as golf and baseball and basketball and others, that the athletes in those competitions bring to the competition different natural physical attributes?

A. Yes, they do. That's why some people win more than others, I think, is some of them have more ability than others. Some of them have a better capacity for developing endurance, and that's a condition that is very hard to quantify. You can't very well say that this is the level of endurance and everybody has to meet this level.

Q. To what extent, Doctor, does the factor of fatigue, physical fatigue, and stress affect the performance of an athlete?

A. Well, I think it's very important. That's why the athlete who has exercised and overloaded his muscles in the trailer or on his own or with his trainer, when it comes to the long tournament on the weekend where he has to walk maybe 20, 25 miles, toward Sunday afternoon, when he is toward the

end of the—of the tournament, the muscles do not work as well as they did on the first day.

* * * *

Q. Now, Doctor, turning to golf again for a moment: Do you have a. opinion based on your knowledge and experience and particularly your work with professional golfers, do you have an opinion as to whether the use of a golf cart reduces the effects of fatigue and stress that a competitor in a four-day, 72-hole golf tournament would otherwise experience if he were required to walk the course during the tournament—

* * * *

THE WITNESS: The answer is yes.

Q. And what is your opinion, Doctor?

A. I think that the use of a cart reduces the amount of stress that is countered against your amount of endurance, so that by Sunday, you probably would not be as fatigued as someone who had walked the course.

Q. And explain to the Court, if you would, in a little bit more detail, why from a medical standpoint based on your experience that would be true.

A. Well, I think that endurance is a hard thing to quantify, but everybody has a certain amount of it and you can increase it by exercise. Overloading your muscles prior to the contest for a period of time increases your ability to do certain physical activities.

As you get close to the end of your reserve, the body doesn't function as consistently as it does early on in your expense of the energy, so that, for example, if you could hit all of your shots on the first day and be very consistent and not shaky at all in your putting and your driving, and as you reach the point where your fatigue is getting close to the end of your endurance, then you become a little bit shaky, and the recruitment of different muscles in the shoulder and back and

legs isn't as consistent so that your accuracy and consistency of shooting and putting is not as good as it was on Thursday.

Q. Now, Doctor, do you have an opinion, based on your knowledge and experience, and particularly, again, your work with professional golfers, as to whether a golfer using a golf cart in a four-day professional tournament has a competitive advantage over competitors who are required to walk the entire tournament?

* * * *

A. Yes.

* * * *

Q. And what is your opinion, Doctor?

A. My opinion would be that they would not have expended as much of their energy reserve, their endurance, as someone who had done all the walking.

Q. When you say "they," you mean—

A. The person in the cart.

* * * *

Q. And in connection with my client, then, Casey Martin, I take it that you are telling the Court that you don't anything at all about his leg condition?

A. That's correct, uh-huh.

Q. You don't and have not tested him or examined him?

A. That's correct.

Q. And you don't his level of stamina?

A. No, I don't.

Q. And you don't whether he can run as an aerobic conditioner?

A. I do not.

Q. And you don't if he can or cannot jump?

A. I don't know that.

Q. And you do not know the amount of effort it takes him to operate and get in and out of a golf cart? You would not know that?

A. I would not.

Q. And you would not know his level of fatigue at the end of the third or fourth day of a golf tournament?

A. That's correct.

* * * *

ARGUMENT TO THE COURT, JANUARY 26, 1998

[21] THE COURT: Well, if you are exempt from the ADA, you are also exempt from the Civil Rights Act, correct?

MR. MALEDON: That's correct. They are one and the same. The test is the same, and that is correct.

THE COURT: And not that the PGA Tour would ever do this, but hypothetically, then, you would be arguing that you could lawfully ban golfers based on race or religion?

MR. MALEDON: Any private organization unfortunately, Your Honor, can do that, and the PGA Tour has never done that.

* * * *

THE COURT: But hypothetically, if the private club exemption [22] applies to you, you would also assert that you could lawfully do that.

MR. MALEDON: Your Honor is hypothetically correct that that is true as to any private organization, a country club, a—the Boy Scouts, anybody that qualifies for an exemption as a private membership organization, that is correct, Your Honor, they are exempt from the civil rights laws. In my view that's—that's one of the unfortunate aspects of what Congress did, but that's what they did, and that's what the law is. So Your Honor is correct.

THE COURT: And you don't think that the participation of the public in the PGA Tour and what they do in terms of generating economic benefits for its members would be such that the courts would not deem PGA Tour to be private under the Civil Rights Act?

MR. MALEDON: No, Your Honor. No, Your Honor, not any more than the same thing is true with respect to the Boy Scouts and the money that they raise. I submit that the Boy Scouts of America probably have as much if not more assets than the PGA Tour, but nevertheless, the courts have held that they are a private organization exempt from the Civil Rights Act.

* * * *

TRIAL TESTIMONY
[67 D. Jones-X]

Q. And could you tell the court the—sort of a shorthand rendition of what the diagnosis is in this case?

A. Casey has a rare congenital vascular malformation which consists of three things. It consists of abnormal vessels under the skin which are called cutaneous capillary hemangioma, birth marks, if you will, port-wine stains. He also has bony hypertrophy, which simply means enlargement of the bone, and in his right lower extremity, his right leg is longer than his left as a result of his condition. And he also has venous malformations in the right lower extremity which is in the form of varicosities which involve the skin, the muscle and the bone in the right lower extremity.

* * * *

[93] D. Jones D

* * * *

Q. Can some of the danger be removed if he's allowed to ride a cart as opposed to walking?

A. I think this is a progressive problem, and I'd certainly like to see Casey with his leg elevated as much as possible. The engorgement of the bone with blood is one of the problems created which creates the resorption of the bone.

Q. Does he have instructions on his person as to what [94] action should be taken in the event of a fracture?

A. Well, actually I made him a small card to put on his golf bag that at least explains his problem so that it he should break his leg at a golf site that they would have some idea of the underlying problem.

Q. All right. Now, can you tell the jury, if he is at risk on uneven terrain that's frequently seen on golf courses, if he walks as opposed to rides, some of that danger is eliminated if he's permitted to ride?

A. Yes, it is.

* * * *

[99] In Summary, Your Honor, the medical records reflect a 25-year old male with a rare congenital vascular malformation of the right lower extremity which has led to, number one, chronic pain secondary to vascular engorgement and progressive loss of bone stock, pain so severe that he has at least considered to explore the use of time [100] contingent narcotics; number two, a documented sleep disorder secondary to chronic pain which leads, according to Dr, Holmes, to an exhaustion syndrome; number three, the need to wear two compression stockings at all times; number four, it has resulted in marked muscular atrophy and weakness in his right calf; number five, it has affected his knee through multiple intra-articular bleeds, causing abnormalities which are painful; and. number six, and most important from the orthopedic aspect, it has resulted in a weakened tibia which is at risk for fracture and potential limb loss and/or serious post-fracture complications.

* * * *

[112] D. Jones-X

* * * *

Q. Doctor, do I understand your testimony correctly that playing golf is a—is a serious risk to Mr. Martin's safety?

A. I think walking across the street is a serious risk to Mr. Martin's safety at this point.

* * * *

Q. That playing golf is a serious risk to Mr. Martin?

A. I think Mr. Martin's leg at this point in time is at risk for fracture with virtually any activity. In other words, a twist, stepping off a curb, someone running into him. I have a great deal of concern about it at this point.

Q. And those concerns are an increased risk of the fracture of his leg, as you've told us?

A. Yes. Correct,

Q. And an increased risk of possible amputation if that were to happen?

A. That's certainly a possible potential end result of such an accident, yes.

Q. Is there, Doctor, danger to Mr. Martin from getting in and out of a golf cart as he plays golf?

[113] A. Yes.

Q. And I take it that the golf cart doesn't protect him from that danger. If the danger is there, it continues to exist?

A. I think it decreases his danger. I think he has a greater chance of injuring his extremity walking up and down the fairway, stepping in a pothole, having a fan bump into him than riding in a golf cart, but the actual act that you ask of getting in and out of a golf course does render him susceptible to injury if it's done inappropriately.

Q. So playing golf even with a golf cart does increase the risk to Mr. Martin's physical well-being, is that what you are telling us, Doctor?

A. I'm telling ~~you~~ that playing golf in a golf cart decreases the risk of his susceptibility to injury.

* * * *

[119] D. Jones – Re D

Q. In the event of the amputation, would it be below or above?

[120] A. If it was necessary today, it would be below the knee, but there's a possibility with the changes in his knee it would eventually be above the knee, as well.

* * * *

TRIAL TESTIMONY

[213 E. Johnson-D]

Q. Okay. Well that's admirable. Can you tell the court whether you prefer to walk as opposed to ride a cart when that option is available , and if you do prefer to walk, why.

A. I prefer to walk, probably for a number of reasons. One, it's how I've played golf most of my life, and it keeps me in a rhythm. There are times when I would prefer [214] to walk because the temperature outside is such that if you are in a golf cart, the wind chill factor drops when you are riding in it and you are too cold. Weather's a real large contributing factor in walking. I would much rather walk if it was raining because I'm able to stay under my umbrella and not get as wet, my equipment stays dry, those types of things.

Q. All right. Are you better able to get the feel of the course when you walk as opposed to ride, or do you know?

A. You get a full effect of the elements. Everything from change in wind direction from one part of the fairway to the other, to being able to watch what the flag stick's doing on the green, to walking down the fairway versus being in the golf cart trying not to run somebody over.

* * * *

[222] Q. Now, there may be some testimony in this case that officials of the PGA Tour can transport players who have hit a ball out of bounds or who have lost their ball back to the tee to hit their next shot and then back again.

A. Yes.

Q. Have you seen that?

A. I've seen that and been involved in that.

Q. All right. So—So it's just not that there can be shuttles between green and tee where there's a long distance, but if you've lost your ball and you are in the play of the game, right in the middle of the hole, and you've hit a 285-yard shot, you've lost your ball, you can't find it, an official can take you

back by automated cart and take you back to the tee; is that correct?

A. That is correct.

Q. Then you hit your ball, and let's say that you fire this one straight down the fairway. Can the official then take you right back down to the ball that you've hit?

A. That's his discretion, but in most cases they will, yes.

* * * *

[229] Q. All right. And does any part of a golf round cause you to work up a sweat? I realize that the nervous energy and being under pressure would. But insofar as the physical aspect of the game, does it create any problem for you?

A. Not more than the temperature outside would cause a [230] person to sweat just standing there or cause a person to be very cold just standing there. There are—There are cases and instances where we play golf courses that are hilly where you might have to walk up a hill and you would be more exerted when you get to the top of the hill than if you were walking on a flat surface or downhill. But because of the pace of the play and our preshot routines, we know not to hit when we are winded or we know not to hit until we are ready to hit the golf ball. So I can't think of a time in my golfing career where I've ever hit a golf shot where I've felt that I wasn't ready to hit.

* * * *

[234] Q. Do the United States Golf Association rules as promulgated or published govern the rules of play at the college level?

A. I understand that they do.

Q. Do the United States Rules of Golf as promulgated by that organization govern play at the Nike Tour level?

A. Yes, they do.

Q. And do the United States golf rules apply to the PGA Tour level?

A. Yes, they do.

* * * *

[237] Q. All. right. Now, the tournament director in the Nike Tour and the rules committee has, according to exhibits that have been or will be received by the court in this case, discretion to allow cart use, and you've indicated one example where they can transport you back and forth while in the middle of your round, the ball is out of bounds, the ball is lost. Can you tell the court in other instances where the —where the you have been accommodated by cart use in your career as a professional touring pro?

A. The one that I can think of that is the most common is when we have a—a long walk or distance between a green that we've just finished playing on and the next teeing ground

Q. Is that known as a shuttle?

A. Yes, it is.

Q. Now, do you know—what—do you know why you are allowed to be shuttled if walking is a part of the game at that level?

A. In making a—I've never thought, given it, really, a second thought. I've always, in most cases, assumed that we had the shuttle for pace of play.

Q. That's so you can keep up with the groups and so forth?

A. Correct.

[230] Q. Okay. But it does kind of accommodate the players in a way, doesn't it, because you don't have to walk long distances?

A. I guess it would accommodate them from a sense of keeping the pace of play a little quicker so we are not out there as long.

* * * *

[239] Q. Okay. Now, do you consider walking is required as part of the stipulated round to be a fundamental of the game of golf or an integral part of it, or do you consider it to be simply an incidental thing that's required by the local conditions of competition?

* * * *

A. I consider walking as part of the game only as the purpose to get to the next shot, and it's a purpose to get a yardage to hit my next shot.

* * * *

[257] E. Johnson-x

Q. And if I understand your testimony correctly, you indicated that among those things were the stance, the setup, the swing. Is there anything else, Mr. Johnson?

A. That is fundamental towards the game?

Q. Fundamental to the game of golf as you've testified. Anything else?

A. Umm, I guess the only other thing would be the yardage.

Q. You have to be able to hit the ball, right?

A. Correct.

* * * *

[272] Q. All right. Now, Mr.—Mr. Johnson, you would agree with me, would you not, that an individual such as yourself who walks 20 to 25 miles over a golf course over a period of four days expends a degree of energy in doing so?

A. You would expend a degree of energy while doing so, but you would regenerate it.

Q. You would regenerate it by sleeping at night? Is that what you are saying?

A. Or standing.

Q. Okay. But without quibbling with me.

A. Right.

Q. You would agree that walking 20 to 25 miles, even for you, is something that causes you to incur some measure of fatigue, correct?

A. To honest with you, I've never given it any thought. I mean, to answer honestly. Sure, anything you do expels different types of energy I've never considered physical fatigue in it.

* * * *

COLLOQUY WITH THE COURT DURING TRIAL

[327] MR. MALEDON: I think the issue there, Your Honor, would be a factual one as to whether or not the—the caddie, the second caddie, was really providing any kind of advice or whether the second caddie was just an interpreter, if you will. Again, setting aside for a moment whether or not the ADA applies within the—inside the ropes.

I think the issue you're not dealing with is the very one we've said remains to be resolved in this case, and that is would the requested waiver of the rule fundamentally alter the nature of the competition. And that's a factual issue, as it is here. As to whether or not it's a—it's a situation that would compromise the competition.

Certainly if the second person out there, in addition to the blind caddie in your example, is providing advice and assistance separately, I think it would violate the rule. But if in your example all the second person out there is doing is interpreting the sign language of the blind caddie, then I can't imagine it would be interpreted as—as violating the rule that you get assistance only from your caddie.

I don't think it would be any different in that situation, Your Honor, than, you know, if you—if you had [328] a caddie that was hard of hearing and used a hearing aid to hear what the golfer was saying to him. Again, you're dealing with just one caddie, so you'd have to look at exactly what is happening in your example.

In our situation, what we know is that there's a rule of the PGA and Nike Tour that requires the competitors to walk. And the issue I believe before Your Honor is simply this, and only this. Is that a substantive rule of the competition? If you require waiver of that rule for Mr. Martin or anybody else, does it alter the competition in any way.

* * * *

TRIAL TESTIMONY
[332 R. Murphy – D]

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Q. Okay. Could you tell Judge Coffin if there have been significant changes in the traditions of the game over the last 40 to 50 years? And if so, what have those changes been that you deem to be most significant?

* * * *

A. The US Open is no longer a 36-hole final. That was a rather dramatic decision that was made back in the Sixties.

The Senior pros ride carts now.

The stymie rule has been eliminated from the game. That was a—certainly a strong point of the game for many, many years.

* * * *

[335] Q. All right. Now, in connection with walking and its. relationship to the game, what do you consider with respect to that **as** to whether or not that would be an incidental of the game or integral to it?

A. Well I—I think walking adds to the joy and pleasure of the game. It certainly does for me. At many golf courses now you're required to take a cart. And I always try to find somebody else who will drive, and I put my bag on the right side and I walk as much as I possibly can. I think walking adds to the joy and the pleasure of the game. I wouldn't call walking an: integral part of the game. I don't think that golf, you know is known as a physically demanding sport, and, you know, the way cross country running would be or some kinds of a track and field event or triathlon. It's—I think walking is the pleasurable part of the game. I certainly enjoy it. And I think that young Mr. Martin certainly misses, and I think he would walk, God given his ability to do so.

* * * *

TRIAL TESTIMONY
[353 W. Goodwin – D]

* * * *

Q. All right. Now, can you tell the court, is it important that, in college competition, that all the players play by the rules?

A. Yes, sir. Of course.

Q. And do they have, in college competition, a rule that prohibits the use of a motorized cart and compels golfers to walk?

A. They have a—they have a rule, but it has exceptions.

* * * *

[355] Q. All right. Did you make a written request on behalf of Casey Martin to the PAC-10 coaches?

A. I didn't, sir. But the Stanford University did.

Q. Was it voted on by the coaches?

A. I don't know that I have any—no, no. When you [356] apply to the PAC-10 conference, the conference voted on that. The conference executives.

* * * *

Q. All right. In any event, it was approved one way or the other, whether it was conference approval or coach approval?

A. Yes, sir, that's correct.

Q. All right. And what happened at the next level at the NCAA championships? Did Mr. Martin participate in those on behalf of Stanford University?

A. Yes, he did.

Q. Was there an application made for him to participate in those championships using a cart?

A. Yes, there was a letter written from Debbie Corum, who was one of the officers in the athletic department at Stanford University, requesting that privilege.

Q. All right. And was that—was that request granted?

A. Yes, it was.

* * * *

[359] Q. Was there any complaint ever made to you by the coaches when he was allowed a cart that that gave him a competitive advantage over the—

A. Any complaints? No sir, there were exactly—exactly the opposite. Everybody recognized Casey for the person he was, and what he was doing with his life, and every coach, to my knowledge, and every player wanted Casey in the tournament and they welcomed him there.

Q. Did anyone contend that that constituted an alteration of the competition to the extent that it didn't constitute the game to your level, the college level?

A. Not at all, sir.

* * * *

[363] W. Goodwin – X

* * * *

Q. Okay. If you showed up with your Stanford golf team to play the University of Arizona and you saw the members of that team with golf carts and you were told when you showed up that the University of Arizona was going to use golf carts but Stanford and its team members were going to walk, you'd object to that, wouldn't you, sir?

A. Not at all. I'd like to beat them in the carts.

Q. I'm sorry. What was your answer?

A. I say I would not object at all. I'd like to see if we could beat them in their carts.

Q. You would like to see if you can beat them in their carts?

A. That would be exhilarating competition for me.

Q. And you wouldn't have any objection to the other team participating in golf carts while your team walked, is that what you're telling the court?

A. I would have none.

* * * *

[366] A. I don't—I don't know that for sure. I have played a lot of tournament golf myself over the years and always felt it was a huge disadvantage to have to ride around in a cart. So I can't answer that exactly.

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Q. Okay. Now, does it qualify in its nature, would it be qualified as an exercise, the game of golf?

A. If you look at the energy expenditure, which is the manner in which you can get some sense of that, the amount of calories consumed in a period of time in walking is roughly in the vicinity, at a reasonable pace, is roughly about six calories per minute, which translates out into somewhere in the vicinity of about 100, maybe—about 80 to 120 calories per mile.

Golf is, according to the references that I looked, falls in that category. So I would suspect if one considers exercise as —excuse me, walking as an exercise, then I suspect golf might also be. The difference is that in walking, it's usually calculated to be a continuous activity. And certainly in the— my understanding of golf is that it's not continuous.

* * * *

[399] G. Klug - X

Q. The subsidiary definition of fatigue in the dictionary is, quote, temporary loss of power to respond induced in a sensory receptor or motor organ by continued stimulation. Do you agree with that?

A. Yeah. Um-hm.

* * * *

[399] agree—I would agree with it.

Q. Okay. And if I'm understanding this correctly, Doctor, the second definition or the subsidiary definition of fatigue means that when a—when a muscle is fatigued, it tends to lose power or the ability to respond as it would if it were not fatigued, correct?

A. If we're talking specifically about muscle, yes, um-hm.

* * * *

[400] Q. Okay.

Now, Doctor, you would agree with me, would you not, based on your background and experience , that a person that walks four to five miles experiences some measure of fatigue?

A. No, I wouldn't agree with that.

Q. You wouldn't agree with that at all?

A. No, I would not.

Q. No fatigue at all?

A. I couldn't—You asked me if I agree with it. I couldn't agree with it unless I knew something about the other factors involved. For example, how long did it take, how large is the individual, how heavy—excuse me, what kind of fitness level the individual has. It's too much—it's too general of a statement for me to be comfortable with giving you a firm conclusion on that.

* * * *

[402] Q. All right. And if I understand your testimony, sir, I don't want to get bogged down in your clinical definition of fatigue, but as I understand your testimony, you would agree that you cannot quantify scientifically to any degree of medical certainty the precise amount of comparative energy that is being expended by one person performing that task as opposed to a second person performing that task, is that right?

A. I would agree in practice you couldn't do that.

Q. In other words, you'd need to know all the other factors relating to the person's physiology, the person's ability to cope with mental stress, physical stress, all the other factors you've talked about, is that right?

A. No, I wouldn't agree with that. I thought what we were talking about is the physiological aspects of caloric consumption. If I could have those six measurements there, I believe I could do that. The stress related to the work done is not the issue. It's—the stress is related to the overall feeling of fatigue. So no, if I had those—[403] if I could calculate those

six things, I would ,feel reasonably comfortable that I can make a pretty good calculation of energy expenditure.

Q. And have you ever done that, Doctor?

A. You can't do it.

Q. That's my point. You can't do it, can you, Doctor?

A. No, you can't. I think I've testified that you can't do it.

Q. Right. Well, maybe I didn't make my question clear, then, Doctor. Let me restate it.

What you're telling me is that somebody who walks 25 miles over a period of four days expends a certain amount of energy. And if two people do that, you're telling me that scientifically, to a reasonable degree of certainty within medicine, you can't calculate the differences, isn't that right, Doctor?

A. I think that's what I've said, yes.

* * * *

[407] Q. I think if I understood your testimony correctly, Doctor, that you said that it was not possible to determine the comparative levels of fatigue between a golfer who walks and a golfer who rides, is that right?

A. That's what I said, yes

Q. Okay. In other words, what you mean by that, Doctor, is that if one golfer rides in a golf cart throughout a round and another golfer walks the 18 holes, you can't determine the comparative level of fatigue or the comparative level of energy that's being expended by those two separate individuals?

A. That's correct.

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TRIAL TESTIMONY
[413 G. Klug-ReD]

Q. Is there anything to the fact that there's any type of cumulative effect going on by 18 holes the one day, the next, the next, for golfers?

A. I have no data to answer that question. My professional opinion is no.

Q. It doesn't make any—make any—that that's not a factor?

A. Not an activity that represents as low of an energy expenditure as golf. If we're talking about consecutive basketball games, consecutive marathons, my answer would be different. But for golf, no.

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TRIAL TESTIMONY
[416 K. DeRocher-D]

Q. All right. Now, can you tell us whether carts are allowed in competition in the PGA of America?

A. Yes, they are

Q. And do players have the option of either riding or walking?

A. Yes, they do.

Q. And is there a general preference amongst professional golfers of your age and stature that have a preference with respect to walking to riding?

[417] A. Of the players that I've observed, most would like to walk and prefer to walk.

Q. What is your preference?

A. I prefer to walk.

Q. Why do you prefer to walk?

A. I think that walking gives you quite bit of an advantage. One, the pace of play when you walk, you kind of set your own pace. You kind of get into a rhythm of walking, you're able to, I think, observe the elements more so than when you're on a cart. On a cart you're kind of zipping from one place to another, trying to figure out where the cart has to go, who do I have to physically not run into.

Whereas, where you come up from the green, where you're able to walk from the fairway and up to and onto the green, you can get the feeling of the lay of the land. How does the green sit, whereas if you're in a cart usually you have to take the cart well around the back of the green on the cart path and come from the opposite side and so you don't get the advantage to see the typical terrain of the green, does the green tend to slant one direction or another.

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[421] K. DeRocher – x

Q. Now, Mr. DeRocher, for the court's benefit, can you explain the difference between the PGA of America and the PGA Tour, if you know, sir?

A. The PGA of America is for club professionals. In [422] other words, you can kind of distinguish the two between what people might say is professional golfers and golf professionals. PGA of America is for golf professionals. PGA of America is for golf professionals, people that work at going courses, that run golf course facilities. The PGA Tour is for golfers that golf for a living. In other words, they earn their living by playing in tournaments and winning prize money.

Q. Be fair to say that the difference is that PGA of America professionals work at country clubs and at golf courses, whereas professionals on the PGA Tour are touring professionals

A. Yes, sir.

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TRIAL TESTIMONY

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[434 R. Ferris – D]

* * * *

Q. Sure. Prior to 1997, sir, was it required that competitors in the PGA Tour qualifying tournament walk the course?

A. To the best of my knowledge, it was not required.

Q. All right. And what happened in 1997 at the board level Mr. Ferris , that brought about a change in that requirement?

A. The feel was on the part of staff and was brought to [434] the board—by staff, I mean the commissioner and the staff—was brought to the board that they wanted to make some improvements to the final stages of the qualifying tournament and, to the best of their ability, to approximate playing conditions as encountered—that the players would encounter at the—out on tour, out on the PGA Tour once they got their card and they would be out on tour. And so they took a number of actions, and which the board approved, to—to create a situation where we mirrored PGA Tour-like conditions at qualifying school, and I believe that one of those actions was to cease to have the use of carts and to put in place that in the finals, I think it's the final, that you must walk.

There were a number of other things done, too.

Q. What's your understanding, Mr. Ferris, as to why competitors in the qualifying tournament in prior years were not required to walk the course?

A. It was a matter of basically practicality. And for the most part, economic practicality. The qualifying tournament is a—it starts out with 1100 people, and it's a series of tournaments and you have the first round and then you have the second round. It's a winnowing down. You start with 1100 arid you winnow it down and you go to the second

round. Then you go from the second round into the finals. I believe that's the series.

[436] And in many of the locations where we played the first and second rounds, the quality of the golf courses wasn't as good, the availability of caddies, not always available, hard to come by. Also from the fact, and this has been a personal concern of mine over the years, is the cost of going to qualifying school is pretty expensive, and for many fellows, they couldn't afford a caddie. It was too expensive to bring their caddie, bring them into the town and be able to pay for it.

So I believe the way they had it was you could always use a cart in those, or you could bring a caddie. You could take your choice. And that's what was done in round one, round two, and then we had this discussion about the final round. And it was, well, this is going to be the final round. Let's make it like life is out on tour. Let's make it as exactingly as life is, so the quality of the course, make sure it's meticulous, make sure we are playing at the lengths, make sure the pin positions are tough, make sure that the greens are fast and let's walk. There's a number of issues.

* * * *

[438] Q. And what did the requirement of walking the course in the finals of the qualifying tournament have to do with replicating the conditions that a competitor would find out [439] on the Tour?

A. Because that is a condition of the competition. I think it's an integral condition of the competition that is required on tour and has always been required. That walking is part of the competition. Walking is part of—of what makes golf. It's—I don't know about you, but if—when you walk, if it's—if it's a hilly course, if it's a long day , the thing that makes golf are your legs, your action through the ball. At least many people think that's what makes it. And at the end of an 18-hole round on a hot, humid day there can be—legs, walking, fatigue is a

factor. It can be a factor. Is it always a factor? Probably not. Can it be a factor? Very definitely.

So the whole purpose here is that it's an integral part of the competition at the highest level. And I think that's important. What I play as an amateur golfer, I play in my club, club events, has no relationship to what occurs out on the PGA Tour. And as I think I spoke earlier, when I play with some of my friends on the tour, like Curtis Strange or Jay Haas. They've got to give me my eight shots, plus six or so more, so we can have a fair game. And that's the difference in the skill level. And what they can do with the ball, well, it's just amazing.

So I guess what we were trying to achieve were conditions that were—that mirrored PGA Tour conditions [440] in all aspects.

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[442] Q. And did it come to your attention at some point, Mr. Ferris, that the—I take it it did as a result of the preliminary injunction, did it come to your attention that the commissioner had turned down Mr. Martin's request to use a cart in the finals of the qualifying tour; is that correct?

A. That is correct.

* * * *

[462] Q. Well, I want to get to the history of it, sir, and I think I know what you are leading up to, but if you could just for the moment just tell the court, if you would, why the Senior PGA Division Board does not require the competitors in Senior PGA Tour events to walk the course.

A. It's an economic matter, because if Arnold Palmer's got an arthritic hip and he can't walk 18 holes and we want Arnold Palmer out there playing because he's good for 5,000 more people to show up at the tournament, he's a draw. He's an economic draw. That's why you allow them to use carts, because it's a nostalgia tour. It's the names. It's these people who have—who have deported themselves over a period of

years and have earned the respect of their fans and the admiration of their fans, Arnie's Army, et cetera, Lee's Fleas, all sorts of things like that. And these people want to play with those people.

So that's the reason why carts were part of the competition on the Senior Tour.

Q. Now, Mr. Ferris, you told us earlier, sir, that the PGA Tour considers walking the course to be an integral part of the competition for PGA Tour, regular PGA Tour and Nike Tour events.

[463] Q. Does the PGA Tour consider walking the course to be an integral part of the competitions for Senior PGA Tour tournaments?

A. No, we don't.

Q. Why not?

A. Because the—Well, the basis of the tournament is different. It's not golf at its highest level. Everything we do on the Tour, on the regular tour and on the Nike Tour, is golf at its very highest level. The way we—I've talked about it ad nauseam about the way we set the course up, everything we do is to produce that week the best person in golf.

Golf on the Senior Tour is, as I said, a nostalgia tour. Yes, it's competition, but it is also a marketing vehicle for people to see older players, players who may have physical disabilities that don't allow them to be out there unless they had a cart. So the whole purpose of permitting the cart is we don't consider it the basis of that tour to be golf at its highest level. We consider it to be a combination of nostalgia and competition.

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[473] R. Ferris-X

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Q. And the purpose of that competition is to determine who are the best players who are applying for that position and pick the best ones to have them on your tours; is that right?

A. The competition picks them.
Q. Right?
A. Yes, that is correct.

* * * *

[472] Q. Well, in that approximately 20-year period between 1968 and 1997, players were permitted to use carts, weren't they, in all phases of the qualifying tournament?

A. To the best of my knowledge, that is a correct statement .

Q. And then in 1997, when you made this change, you were still going to get players down, whittle down from the approximately 1100 that apply down to the 168 in the final stage, permitting them to use a cart, weren't you?

A. In phases one and two we were going to allow the use of carts, as I explained before, due to—and this goes back to your highlighting this, as closely as possible. Due to the fact of—of economics, due to the fact, i.e., the caddies, getting them there, bringing them there, a lot of the young people couldn't afford them. The other thing is they weren't available at the local sites, couldn't get enough caddies. So for those reasons, carts were allowed.

And it was part of the winnowing down process. You know, there are a lot of people that have the Walter Middy dream, and they are willing to pay the 4,000 just for the fun of going and trying.

* * * *

Q. Well, if you could answer this question.
[476] A. Sure.
Q. In 1997 when you made this decision—
A. Right
Q. —you decided that you didn't need to test walking for the —to get the people down from 1100 down the 168, did you?
A. It was an economic decision.

* * * *

[490] Q. All right. Now, I want to talk to you about the Senior Tour that you've had some experience with.

Am I right that the Senior Tour has been called by many in the sports world the most successful sports venture of the 1980s?

A. I think that's a correct term, yes.

Q. And the Senior Tour includes 78 of some the most talented golfers in the world, doesn't it?

A. No. The Senior Tour includes 78 of some of the used-to-be most talented golfers in the world. They are still talented, but they are not nearly as talented as the young people that play on the regular tour or the Nike Tour.

* * * *

[491] Q. Now, in fact, you've publicly advertised the Senior Tour players using the slogan, These Guys Are Good.
A. They are.
Q. And when the Senior Tour started in 1980, by 1986 when you were on the Senior Player Division Board, it had grown in stature beyond all expectations; is that correct?
A. That is correct.
[492] Q. And it had done so with players using golf carts, hadn't it?
A. That is correct, because it was a nostalgia tour.
Q. It had been able to establish its stature with players using golf carts, hadn't it?
A. It was a different form of competition, yes. It was a different form of competition, where you were playing for the pleasure of playing with one of your heroes, just like people go out and play with the Cubbies in Chicago. The old Cubbies, that is.

* * * *

[493] Q. And then it was in—after 1985 when you got the televising of your tournaments, it was in January of 1986 that

Mr. Arnold Palmer first raised the issue at a board [494] meeting and argued that carts detracted from the public image of the tour; is that correct?

A. Are you reading from something so I can just accept it without having to look at it?

Q. I was reading from Mr. Palmer's testimony.

A. Oh.

* * * *

[495] Q. Now, these are the minutes where Mr. Palmer first raised the issue?

A. I believe that's correct.

Q. All right. And it doesn't say anything in those minutes about Mr. Palmer wanting this to be conducted as a physical competition, does it?

A. I wish I was a speed reader.

These minutes do not reflect that, but I can tell you in the discussions I've had with Mr. Palmer over the years, that's exactly what he means. Minutes don't always completely and accurately reflect everything that took place in a meeting.

* * * *

[496] Q. At the time you made—Mr. Palmer came forward with this proposal, you suggested that what should happen is that carts should be banned and medical exemptions given; is that correct?

A. Yes, that is correct.

Q. And you were going to allow any player with a bona fide medical certificate to use a cart; is that correct?

A. As far as I was concerned, it was even broader than [497] that. In other words, we could not afford to lose, let's say, Sam Snead or Julie Boros out there. We needed every great name we could go get, so if they said they needed a cart to complete 18 holes, they got a cart.

* * * *

Q. And was it a unanimous determination of the board that carts be banned except that cart use would be permitted in Pro-Am rounds and for players with bona fide medical certificates?

A. Yes, that was, you know, a medical—yeah, that's correct .

Q. That was what the division board unanimously agreed on?

A. Right. Because we needed those fellows out there for the draw.

* * * *

[498] Q. To this day, any player who is 50 or older and who needs a cart due to a medical disability is accommodated, am I correct?

A. No. Today on the Senior Tour, to the best of my knowledge, if they want to use a cart, they can use a cart. If they want to walk, they can walk.

Q. And in that way—

A. And the reason for that is the board passed a rule change, what Arnold proposed, and it didn't take but, as I said, two weeks out on tour and there was an uproar against it, and the guys said, hey, wait a minute, we are going to lose the great old names. We can't have this, so let's put this all to bed. Let people use carts if they want to use carts, let them walk if they want to walk. The purpose of it is let's get the names out on the field of play.

* * * *

Q, All right. Now, Mr. Ferris, do you have any way of keeping track with of your seniors use carts and which do not?

A. I have no idea.

* * * *

[501] Q. And they are making their living and their livelihood on the Senior Tour, aren't they?

A. They are making their living and their livelihood, sure. Many of them are. Many of them are.

Q. And the total purses available on the Senior Tour are over 40 million dollars, aren't they?

A. I believe they are.

Q. And that compares to a total of 6.4 million on the Nike Tour, doesn't it?

A. I will accept what you say to be that.

Q. And one stroke can make the difference between first and second on the Senior Tour, can't it?

A. Makes the difference in any game of golf, yes.

* * * *

Q. And if a player is 49 years old plus 364 days and that player plays in a tournament, that player is playing the same golf that he plays when he turns 50 years old the next day, isn't he?

[502] A. You mean if a player is playing on the regular Tour, if he's on the regular Tour and then when he passes—when he becomes age 50—not many of them continue to play on the regular tour. Their golf game goes into a hiatus, they become a club pro for awhile, and then they come back out and say, hey, the Senior Tour is here, golf's greatest mulligan. I'm going out and I'm going to see if I can go do it again. Some players transition directly from the regular tour to the Senior Tour, but I think it's important to distinguish that not all do.

Q. Right. Well, the ones that do, when they are stroking the ball, practicing their game, figuring out their strategy, doing their putting—

A. Um-hmm.

Q. —they are playing in the same manner that they played the day before when they were only 49 and 364 days old?

A. Exactly, correct.

TRIAL TESTIMONY
[520 H. Toscano - D]

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Q. Okay. Now do you go under the same rules, the USGA rules? And are those your rules of competitions?

A. Yes.

Q. And do those—do those rules—those rules govern the competition, and then you have your local conditions of competition promulgated by the PGA; is that correct?

A. Right.

Q. The hard card?

A. Yes, that's correct.

* * * *

[521] Q. Okay. Now, do you feel—Do you walk, sir, when you play?

A. Yes, I prefer to walk.

Q. Okay. Do you feel that you are at a competitive disadvantage to the seniors who ride?

A. No, I don't feel that way at all. In fact, I believe when I walk, you know, my blood flows better, I think better, I'm more aware of what's going on, and I have the ability to think about what I'm doing, and sometimes, if you get a little upset, you can walk it off. And so I consider it an advantage to walk.

Q. Okay Now George Archer, he's a member of the Senior Tour?

A. Right.

Q. He has a bad hip?

A. Yes, he does.

Q. And he uses a cart?

A. I believe George does ride, yes.

Q. All right. Do you feel when you play against George Archer that you are at a disadvantage because you walk?

A. No.

Q. Okay. And the two money—the winners, the two main winners on the Senior Tour, Hale Irwin and Gil Morgan, you indicated that they walk like you?

A Yes.

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TRIAL TESTIMONY
[549 C. Martin- D]

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Q. Can you describe generally your medical condition through your childhood, please?

[550] A. Well, I was born with Klippel-Trenaunay-Weber syndrome, and basically the blood goes down into my leg, but the veins don't bring it up properly.

Q. Okay. And can you indicate how this affects you mentally, this condition? In connection with your play of golf, what stress that causes you?

A. Certainly. There's a lot of pain involved. Oftentimes severe. A lot of discomfort with the stocking I have to wear. That wears on you, both mentally and physically. There's also a stigma attached when you limp and no one else does and you're kind of known as a person with a disability that I have to deal with.

* * * *

[552] Now, has your condition worsened over the last year or so?

A. My condition has been steadily worsening for about the last four years, I'd say. Ever since—well, it's always been bad, but I can remember midway through college I started really suffering, especially in my shin, in a way that I hadn't experienced before. And that's been progressively getting worse the last four years.

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[563] Q. So do you see any advantage that you would have over a PGA Tour player, competitor of yours, in hot weather if you were allowed to ride a cart as opposed to them walking?

A. I don't see an advantage. If I could trade my leg and [564] a cart for that good leg, I'd do it any time, anywhere.

* * * *

[565] Q. Now, can you tell. us with respect to the college later on, they did accommodate you upon your application, is that correct?

A. Yes.

Q. Okay. And you were allowed to use a cart, then, under the PAC-10 rule that allowed for cart accommodation upon a medical verification and application?

A. That is right.

* * * *

[567] Q. Okay. Now, the NCAA granted you a cart under their nondiscriminatory clauses?

A. Yeah. The NCAA and PAC-10 has a clause that says it you're legally disabled, all—you know, you have to apply for it, and if they pass it, majority vote, I don't know the exact details of it, but you can gain accommodation. And I did. I was granted that in college.

Q. Now, after college, because you were no longer required to carry your bag, did you think that you'd be able to play professional golf without difficulty by using a caddie?

A. Yeah. In fact, after I graduated from college I was excited because I figured the tough part was done, you know, 36 holes carrying your bag, and now I could, you know, have a caddie. And it just—excuse me—my leg just has been deteriorating. It took a beating in college and stuff and just hasn't come around. It's not that the conditions or the walking is so strenuous in professional golf. It's just that my leg's gotten bad.

* * * *

[568] Q. In PGA Tour golf and PGA Nike Tour you play under the USGA rules, the same as you did in college?

A. Yes.

Q. And those rules, 1 gather from what's been said so far, those rules don't require that you walk the rounds?

A. No, it's optional.

Q. Okay. And is there, in a book *Decisions,* which is interpretive, I believe the court has the book *Decisions* on Page 515 is there a statement therein that in competition carts are allowable?

A. Yes. I believe the USGA ruled that carts are allowed in competition.

Q. Okay.

A. In the highest level of competition.

Q. And there was some discussion about handicaps that was given by Mr. Ferris, and just to get through that, handicaps are used at the amateur level so that fellows who want to go out and play and some guy's a lot better than the other, the guy that's the better player has to give the other guy some extra strokes?

A. That's right. And I don't believe there's any recognition of who rides and who walks.

* * * *

[569] Q. Now, if both of those players played against each other and one used a cart and the other walked, does the one who uses a cart have to make an adjustment because he's using a cart?

A. No. No.

* * * *

[570] Q. Okay. Now, in factoring handicaps, do they factor into the equation whether you used a golf cart or not?

A. No, they do not.

[571] Q. All right. Have you ever known that they factored in the golf cart into the equation to say that you had an easier time with a round or a tougher time?

A. It's a nonissue.

Q. Okay.

Now, what advantages do you see—you would prefer to walk, is that what I gather, if you could?

A. Oh, absolutely, I'd prefer to walk. In college I was granted an exemption to ride, but every time my leg felt up to it, I walked at every possible chance.

* * * *

Q. All right. Now, when you use a cart, how much walking do you do, would you say?

A. I still have to walk a lot. There's a lot of times the cart can't get close enough to the ball, whether it be weather conditions, if it's wet, or around the greens. You're still required to walk. I mean, clearly not as much as if you were to walk the full course. But I'd say I walk, you know, 100 yards for a 400-yard hole, at least.

Q. Okay. About 25 percent?

A. I'd say—yeah, I mean, I could never say. But depends on some courses. At Lakeland, for example, when I played there, they wouldn't allow me to take a cart off the path, cause it was wet. So I walked a lot. I can't say I walked as much as everyone else, but it wasn't nearly the [572] differential you'd be made to believe.

* * * *

[576] A. You had two options. You either had a caddie or you took a cart. And you couldn't deviate from those two.

Q. Did it change the nature of the competition?

A. Absolutely not. It was the same game. Everyone played. And the PGA Tour made no distinction, they didn't know who rode, who didn't. It was a nonissue.

Q. All right. And then and then—at the second stage of competition, same rules, USGA?

A. USGA rules. You—you know, it was the same deal as first stage.

Q. And did it change the nature of the competition as far as you could perceive?

A. Absolutely not.

Q. Okay. And did it appear that the players with carts were given any advantage over the ones that were walking and using caddies?

A. Clearly not.

Q. Okay. now, in the third stage, the court entered a temporary injunction, and then you went down there to play in the third stage, there were 168 players, is that right, 56 per course?

A. That's correct.

Q. And you would play one course three times and the other course three times?

A. You'd rotate, yes.

[577] Q. Okay. And there was some question whether Mr. Duncan—he's the tournament director for Nike?

A. Um-hm.

Q. There was some question whether he did or didn't keep count of the players that used the cart as opposed to those who walked. But let's say, for example, let's just say right now, let's say you're in the third day of Q school, you are on the course, you're out there, how many—how many players did you see actually use a cart separate and apart from yourself?

A. That's a great question, because when I went back there I was anxious to find out. Had they changed the rule to allow everyone to ride except me, I was anxious to find out how many guys would choose to ride. The first day I did not see one person in the cart besides myself. Throughout the entire six days I think I saw a handful, five or six. That was throughout the entire six rounds. And I was looking hard because I was interested. And I—I'd say just a handful of guys over those six periods.

* * * *

[585] Q. Okay. And did the medical notebook that the court has, were all those records sent back, to the best of your knowledge, to the Tour?

A. Yes.

Q. Was a copy of the tape that's been played in court sent to the Tour?

A. I believe that was sent to them. I think after the Q School, though.

Q. Okay. Were they returned to us?

A. They were returned to us, yes.

Q. Do you know—do you know why—why they were returned to us?

A. I just know they said it was irrelevant and that I'd have—I know they said I had a competitive advantage, and yet they never considered my condition.

* * * *

[590] C. Martin - X

Q. Are you familiar with the rule that limits competitors in most tournaments to carrying 14 clubs in their bag?

A Yes.

Q. And you would agree with me, would you not, sir, just to take that as an example, that if that rule were altered for one competitor and not others that that would fundamentally alter the nature of the competition?

A. Well, certainly. Because that's shot-making, that's where the game is played, with your clubs. And so if someone had an advantage with their clubs, I could see [591] where that would be an alteration of the game.

Q. And similarly, sir, if—if you showed up for a competition and you were told that you were going to be required to adhere to the one-ball rule contained in the conditions of the competition on the hard card, but that the other competitors in the competition would not, you would consider that to be a fundamental alteration of the rules, correct?

A. I would. Only because, again, that's shot-making, that's when you hit the ball and that would constitute, I believe, you know, an alteration of the game.

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[603] C. Martin – ReD

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Q. You indicated the distinction on the 14 club rule and the one-ball rule is that that relates to the actual competition, the actual game itself.

A. Actually striking the ball.

Q. Okay. Now, can you tell the court why, if a player had 15 clubs in his bag as opposed to 14, he carried an extra club, what extra club might he carry and how might that be advantageous?

A. He could carry a utility club or some club that could be an advantage over someone else, simply because of the nature of the club. You'd have one extra tool to work with.

Q. Okay. And that one-ball rule, there's been described a high compression ball off the tee—

A. One-ball rule, I mean, I don't if it's a fundamental of golf, but they do it just to kind of prevent you from taking a hard ball off the tee and a soft ball into the green. Kind of towards that.

Q. Can you explain to the court just briefly, what's the advantage of having a hard ball off the tee and a soft ball [604] around the green?

A. Sure. On some holes that are long you'd play a hard ball and get all the distance. Whereas on a short or a Par 3, with the pin tucked behind the sand bunker or something, you'd want a soft ball. They just eliminate that. They make you play one ball so you don't gain an advantage either way.

* * * *

[602] C. Martin – X

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Q. And you filed tax returns, as we're all required to do, right?

A. Yes.

Q. And when you filed the tax returns, you described yourself as self-employed, correct?

A. I believe that's right.

Q. And you deducted as a self-employed individual on your tax returns all the expenses that you had incurred in participating in those tournaments, such as your travel and lodging and meals, et cetera, correct?

A. Correct.

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TRIAL TESTIMONY
[637 K. Venturi – D]

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Q. Now, Mr. Venturi, based on your experience as a professional golfer and golf analyst, sir, to what extent do fatigue and stress affect a professional golfer during the course of golf tournament.

A. Well, the physical stress is—comes with—what—they go hand-in-hand. Mentally, you can drain yourself physically like that, too, because of the titles, the pressure. There are times that you, you know, you just don't eat sometimes. It depends how you handle pressure, and those that handle pressure better are those that—there's all these ingredients which go together to make up a champion. But being physically fit is very, very important. That's why there are times that—that I have [638] had times in—when—in my—when I was going full bore, it was nothing for me to take a day off and hit golf balls for seven, eight hours.

Q. But in terms of the competition, itself, sir, four days of 18 holes or perhaps, because of weather conditions, more than 18 holes on a single day, to what extent does fatigue become a factor that affects the golfer during the course of the competition?

A. Fatigue is a big factor. In fact, that is what—that is what really alters your game. You have to make—you get the fatiguing and you know it's coming, instead of hitting a certain iron, you may step down and hit one a little bit less, maybe hit it easier. Don't use the strength. You try for more accuracy. But when you feel that you are losing your physical strength or draining yourself, you have to make conditions for it. You have to now revamp your game and revamp your shots.

* * * *

[639] Q. And, sir, does a particular golf course, the configuration of a particular golf course that is being used for

a tournament, have an impact on the level of fatigue that players experience during the course of the tournament?

A. Oh, very much so. You can go to a golf course in Tucson, which is very flat, or go to Phoenix; then turn around and go to a place like Castle Pines that's up in Denver. The Masters, Pebble Beach, very, very difficult walking. Hills, up the hills, the whole thing, and that is where conditioning really takes a big part of it.

Q. Now, you talked about the fatigue factor that affects professional golfers, Mr. Venturi. To what extent, sir, does this fatigue factor tend to build up over the course of the four days of tournament?

A. Well, when you start you play the practice rounds, and I guess in the course of four days you will walk probably somewhere in the vicinity of the 25 miles, and as I said, again going into the mental part of it, once you get to the [640] end you get more fatigued when you are in the hunt. You know, if you are shooting 80, you don't get fatigued. It's when you are getting there. You are getting to the last nine holes. You know what the tournament's—the victory will mean. Mentally, you are getting mentally drained, physically drained and you have to be prepared. By Sunday, you are—you know that the game is on and that you better be ready for it, and if you are not, you are not going to win.

Q. So are you telling the court that this fatigue factor tends to accumulate over the course of the four days of the tournament?

A. Oh, definitely. There's no doubt.

Q. Now, Mr. Venturi, let's talk about your own experience as a professional golfer. I take it from what you said a few moments ago that fatigue was a factor that would affect your own game from time to time?

A. It would—I would always take into consideration, yes.

Q. Well, let's talk about some specifics, sir. Does fatigue during the course of tournament affect your concentration out on the golf course?

A. Oh, yes. Yes.

Q. Tell the court what you mean by that.

A. When you get—when you get physically tired and you [641] are getting mentally tired trying to play, I would get—trying to stay in shape, I would—a lot of times I would get where I would get into like a self—hypnosis. I get myself knowing what I wanted to do when I was walking and playing and never really feel the draining of strength until I got finished, sat in the locker room after finishing. I would just sit down and not realize that—how drained I was.

[643] Q. Does this fatigue factor that you've talked about, Mr. Venturi, affect the manner in which you—you perform as a professional out on the golf course?

A. Oh, there's no doubt, again, but that, that fatigue does play a big part. It will influence your game. It will influence your shot—making. It will influence your decisions.

* * * *

Q. And does fatigue, sir, affect the stroke, itself? The manner in which you hit the ball?

A. Absolutely it does. It's just if you—for—once you start playing, once you start practicing, it would be like how strong you would be for the first hour of practice and how strong you would be for the fourth hour of practice. Your shot—making changes because fatigue is an influence.

* * * *

[645] Q. Now, Mr. Venturi, in your answer you said that the [646] requirement of walking was part of the competition. Would you explain to the court what you mean by that, sir, at the PGA Tour and the Nike Tour level of competition that you are familiar with.

A. Walking is part of the game. It's whether—any sport that you are in, is that walking and conditioning is still what leads to your shot-making. The whole sport combined. You are going to the top level. For fun, for recreation, I don't care what you use. But we are now going to find out the best golfer in the world.

* * * *

[653] Q. Based on your experience, do you believe that it would fundamentally alter the nature of the competition on the PGA Tour and the Nike Tour if competitors in those events were permitted to use golf carts?

A. Yes, absolutely.

Q. Why do you say so, sir?

A. It would—it would take away the fatigue factor in many ways. It would—it would change the game.

* * * *

[665] K. Venturi - x

Q. So it doesn't make any difference if it's 18 holes or 36, the stamina expended or necessary would be the same?

A. It's all the same for everybody.

Q. So the 36 holes has nothing to do with it?

A. I kind of like 36 holes.

* * * *

[676] Q. Now, when you say that the use of carts takes away the fatigue factor, it would be an aid, et cetera, again, as I understand it, you are not testifying now about the plaintiff. You are just talking in general terms?

A. Carts.

Q. Pardon?

A. Carts.

Q. Yeah. You are just talking in general terms?

A. Yes, sir.

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TRIAL TESTIMONY
[722 J. Bell – D]

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Tell the court, if you would, Ms. Bell, who it is that plays under these Rules of Golf that are promulgated by the United States Golf Association?

A. Well, these are the rules of the game, so all golfers. These are for all people who play the game.

Q. So the two amateurs that go out on the weekend to play golf together would—would play by the Rules of Golf?

A. We certainly hope so.

Q. Or a tournament that is conducted at a private country club for its members, is it your understanding that that would typically be conducted under the Rules of Golf?

A. Well, that's—that's right. If you want to play golf, you need to play by these rules.

Q. Now, you mentioned the Rules of Golf as including certain provisions that are in the appendices. Would you explain to the court what you mean by that.

A. Well, it's just the way the rules are organized. When you get to the appendices, for instance, if we look at Appendix I, the language for local rules that may be adopted by the committee in charge of the competition, this is the people that are conducting the competition.

Q. Now, let's explain that a little bit more. When you say the committee in charge of conducting the competition, [723] who precisely is it that you are talking about?

A. Well, it could be, for instance, at the—at the competition you mentioned it could be the local pro, it could be a championship committee at a club. It could be—In the instance of the United States Open Championship, it would be the United States Golf Association's championship committee. And they would define the conditions of the competition. And those conditions—There's conditions in the appendix as—in terms of there's optional conditions, and there is also language for local rules that relate to specific

situations on certain courses. And it's up to this committee, under Rule 33, to define the conditions of the competition.

Q. Now, let's explore that, Ms. Bell. When a committee that is conducting a competition—and let's take the PGA Tour, for example. If the committee or the organization conducting PGA Tour events decides to adopt certain of the—the optional conditions contained in the appendix to the USGA Rules of Golf, are those still rules of golf for those competitions?

A. Once they are adopted, they certainly are. They are rules of the game being played in that competition.

* * * *

[724] Q. Now, you've referred to Rule 33. Would you—Would you specifically identify for the court what it is that you are referring to in Rule 33 when you talk about Rule 33 having some reference to the appendix.

A. Well, Rule 33 is about the committee. And the committee is in charge of the competition. As I tried to define it, whether it's the United States Golf Association, or whether it's a committee from a club or a committee from—who is running the competition. And it's all about—to have, really, top-level competition. Somebody's got to lay down these conditions under which a [725] competition is played And that's very clear.

* * * *

Q. And Rule 33 charges the committee with determining which conditions it wants to be applicable to its particular events, correct?

A. Correct. And suggests language and the manner in which the committee can lay down these conditions.

* * * *

[726] Q. And does the reference to conditions in Rule 6 and Rule 33 include the optional conditions that are contained in the appendix of the USGA Rules of Golf?

A. Surely.

* * * *

[727] Q. Let's talk for a moment, if we could, about the—the two US Open championships, two of the 13 championship events that you mentioned.

Ms. Bell, is—does the USGA require the competitors in those championship events to walk the golf course during the competition?

A. We do.

Q. Has that always been the case, to your knowledge?

A. It has been. It has been. We think this is an athletic competition, and that that's a key element.

Q. Tell the court, if you would, Ms. Bell, why it is that the United States Golf Association requires the competitors in its United States Open Championship events to walk the golf course.

A. We think it's an athletic competition, and walking is a [728] key element, and we think that—that that's the way to propel yourself around the golf course. And certainly—It's the backdrop of all the other things that go on. It relates to your ability to concentrate, and it's under this condition of walking around the golf course that—that you have to think clearly, and it's more about stamina than it is, in my mind, about fatigue. It's about a longer extension of being able to walk and get around the course.

* * * *

Q. Am I correct, Ms. Bell, that the one-ball rule and the walking requirement are optional conditions that are taken from the appendix of the USGA Rules of Golf?

A. Yes, they are listed as optional conditions under Appendix I.

Q. And the USGA in its championship events adopts its optional conditions for its events?

A. We do.

Q. Now, is it correct, Ms. Bell, that walking is required in all 13 of the USGA's championship events, or are there some in which walking is not required?

A. The two championships where walking is permissible, to use automotive transportation, is in the Senior Women's Amateur Championship and the senior Amateur Championship.

* * * *

[732] Q. Now, Ms. Bell, there's—there's been some suggestion in this—in this litigation that the—the concern about using carts in championship competition has something to do with television and how carts would look on television.

In all your years with the USGA, have you ever heard such a suggestion at the USGA?

A. No, I haven't. I would hope that would never be the case. I mean, I think it's more about this sport, this game, that it is an athletic competition. Obviously it's [733] not a major endurance contest, because otherwise we'd require players to run between shots, but it certainly is part—it's a central part of the competition at the highest level, and no, I—I mean, we are very concerned with the course, making the setup, the—the conditions the best they can be to test the skills of these players against what we—you know, what we define as being top level. And I can't imagine that how something looks on television is—it's too contrived for me.

* * * *

Q. Right. I like the way it sounds when I say that I have a two handicap, so—now, if I have a two handicap and I want to get into a U.S. Open, I can be riding a cart for five straight years, can't I? I can ride a cart as much as I want to for five years and qualify to come into your Open qualifying with a two handicap and you don't hold that against me that I rode in the cart, do you?

A. No. Once you—Once you enter and began the process.

Q. You don't ask the players when they are entering in your qualifying whether they got the two handicap by riding or walking?

A. No. No, we do not.

Q. As a matter of fact, your handicap system doesn't penalize—your handicap system does not impose any penalty against a person who uses a cart, does it?

A. No, it doesn't.

Q. So if—Again, going back to myself and Mr. Martin, if he were to walk and if I—

A. But our handicap system, excuse me, doesn't have anything to do with the conditions of a competition.

* * * *

[749] Q. All right. And the—the USGA rules allow carts to be used in competition, don't they?

A. I don't understand that question.

Q. Your rules allow carts to be used in competition?

A. It depends what the committee in charge of the competition adopts and what they lay down as a condition.

* * * *

[753] Q. Okay. Now, in—on Page 108 of that book it refers to transportation. And it states that, "If it is desired to require players to walk in competition, the following condition is suggested." This is what is suggested: "Players shall walk at all times curing a stipulated round."

Is that correct?

A. That's correct.

Q. Now, if the PGA Tour adopted that language and then added this, "Except as allowed by the tournament director or tournament rules committee, "or—at the Nike level—or if they added this, "Except as permitted by the rules committee for PGA Tour events," that would be added language to your suggested 108, would it not?

A. Well it would be, but there's where you are beginning to change things, because you are talking about exceptions.

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TRIAL TESTIMONY
[763 T. Finchem-D]

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Q. Mr Finchem, what do you do for a living, sir?

A. I'm the commissioner of the PGA Tour.

Q. How long have you been the commissioner of the PGA Tour?

A. Since June 1st, 1994,

Q. How long have you been associated with the PGA Tour, sir?

A. I've been an employee of the PGA Tour for nearly ten years, and prior to that for three—I guess four years I was an outside consultant to the PGA Tour.

Q. What positions have you held with the Tour prior to becoming commissioner of the PGA Tour?

A. I was, for a very brief period of time upon arriving at the Tour, vice-president of business affairs, and then I was for five years deputy commissioner, and chief operating officer immediately prior to becoming commissioner.

Q. Tell the court, if you would, Mr. Finchem, what your duties and responsibilities are as commissioner of the PGA Tour.

A. My job is to oversee the business affairs of the PGA Tour, serving as, in effect, as chief executive officer, as well as the sports side of the PGA Tour, serving in the traditional role of the commissioner with regard to rules and disciplinary matters of the competitions.

[764] Q. Now, Mr Finchem, explain to the court, if you would, briefly, what the organizational format of the PGA Tour is with a particular emphasis on the three tours that the PGA Tour operates.

A. Well, we have—we are organized in three specific tours, the PGA Tour, the Senior Tour and the Nike Tour. On each of those tours, which combine for a total of, I guess 122 tournaments, we organize those competitions as part of a joint

contract with a cosponsor. The cosponsor stages the tournament. We arrange for the competition of the tournament.

On the Nike Tour we typically have 30 events during the course of the year. On the PGA Tour we typically have 42 events. We include on the PGA Tour as official money, for purposes of our money list, the winnings of any of our members in the PGA Championship, the Masters, the US Open and the British Open.

And among those tours we have approximately 200 players on the PGA Tour who are basically exempt players, 83 players on the Nike Tour who are totally exempt players and a total of about 160, 170 who have some form of access, exempt or otherwise. And then on the Senior Tour we have approximately 110 to 140 players who have different ranges of access, typically 85 are generally what we call exempt players.

* * * *

[765] Q. Now, Mr. Finchem, you—you referenced the requirement that competitors walk. Has it always been the case, to your knowledge, sir, that competitors in PGA Tour [766] and Nike Tour events have been required to walk?

A. Well, certainly for PGA Tour and Nike Tour events The Nike Tour was started in 1990, so I can speak directly to that The PGA Tour was formed as an entity in 1968 and it has always been a requirement that you walk in PGA Tour events since the formation of the PGA Tour. And prior to that, the early beginnings of what we now know as the PGA Tour go all the way back to, I believe, 1916. During those early years it was a division of the PGA of America, and during those years, as well, walking was a requirement.

Q. Now, Mr Finchem, I take it that there are certain rules that are applicable to PGA Tour and Nike Tour competitions?

A. Yes, there are.

Q. What are the sources of the rules that a competitor

needs to access in order to determine what rules govern his participation in PGA Tour and Nike Tour competitions?

A. At all PGA Tour and Nike Tour events the rules that govern the competition and as enforced by our rules officials and tournament director come from three sources. One is the Rules of Golf Judy Bell described. Two is the Conditions of the Competition, which we generally refer to as the hard card. And then on a weekly basis at specific tournaments we have what we call the Notice to Competitors, [767] which relate to any specific things that relate only to changes in conditions for that particular tournament that particular week.

* * * *

Q. Now, you said, Mr Finchem, one of the sources of rules that a competitor in PGA Tour and Nike Tour events must be aware of is the Rules of Golf. You have in front of you Exhibit 59 in evidence. Is that what you are referring to as the Rules of Golf?

A. Yes, it is.

* * * *

Q. Mr. Finchem, first of all, with respect to Defendant's Exhibit 105, can you identify that for the court as a copy of the hard card for the PGA Tour that you previously described for the court?

A. Yes, it is.

Q. Tell the court, if you would, what the hard card is and how it is utilized by PGA Tour in terms of setting forth rules for its competitions.

[768] A. It's a statement that's promulgated by the tour office, typically on an annual basis, that relates to whatever conditions and local rules we are going to operate under during the course of the year pursuant to the Rules of Golf.

* * * *

[769] Q. And what's the reason that Notices to Competitors are given to the competitors at the outset of the tournament, Mr. Finchem.

A. Because this is—this is part of the rules of golf that will control the competition for that week, and it's important that the competitors in the competition that week understand the rules that they will be playing under during that week of competition.

Q. Why is it necessary, Mr Finchem, to wait until the start of a particular competition to give the competitors the Notice to Competitors as a supplement to the Rules of Golf and the hard card that contains the separate conditions of the competition?

A. Well, the Notice to Competitors deals with some of the vagaries that occur as they relate to the particular golf course involved that particular week. Our golf courses change from time to time. Tournaments, we have an advance staff that goes in the week before, and among other things, [770] in reviewing the property, we'll develop the Notice to Competitors. It may relate to damage on the golf course, water hazards might change, there's a variety of things that might impact in the final—final version of what the Notice to Competitors says.

Q. Now, you said, Mr. Finchem, that all three sources that you have in front of you, the Rules of Golf, the hard card and the separate Notice to Competitors, at the start of a particular tournament are the rules applicable to the competition; is that correct?

A. That's correct.

Q. Does a competitor have the right to pick and choose any of those rules that he wishes to follow or not follow?

A. No. All the rules apply to all the competitors in the field.

Q. And do the rules contained on those resources, the Rules of Golf, the hard card and the separate Notice to Competitors, apply equally to all of the participants in the competition?

A. Absolutely.

* * * *

[771] Q. Tell the court, if you would, Mr Finchem, why the PGA Tour requires participants in Nike Tour and PGA Tour competitions to walk?

A We believe that the walking and the physical challenge that it entails in walking 72 holes of golf over four days in a variety of conditions is a key element to the competitive nature of the game, combined with the stress level that is involved in the competition, combined with the challenge of—the other challenges faced by the competitor with regard to the setup of the golf course. All of these factors work together to create a unique challenge for just the players at this level, the elite players at championship professional tournament level of golf.

Q. Now, Mr. Finchem, there's been a suggestion in this case that the walking requirement applicable to PGA Tour and Nike Tour events is—is not really an integral or essential, whatever term you want to use, part of the competition, but is merely a matter of tradition. How do you respond to that kind of an accusation, sir?

[772] A. Well, it's just not correct If we were only taking this position in this case, because this is the way we've always done it since the Scots played in 1500, we would be wasting our time. The reality is that walking is a fundamental part of the competition. It is one of the things that separate the level of competition at the PGA Tour level from all other levels of competition in the game of golf. And even though we've done it for a long, long time in the game of golf, that is not the reason that we feel that walking is so important to the integrity of the competition at this level.

Q. Mr. Finchem, there's also been a suggestion in this case that the—the prohibition on the use of golf carts by competitors in PGA Tour and Nike Tour competitions is somehow related to how golf carts might appear on TV. How do you respond to that, sir?

A. Well, that's not correct. And let me make two comments that I think will support that. One, walking has

been viewed as an important part of the game for a long time before television came to the game. As a matter of fact, at the time of the advent of the PGA Tour in 1968, I think we had about 100 hours of golf on television. Now we have 750 hours of golf. But even before any television or telecasts of golf, walking was a part of the game.

Secondly, we have carts on the Senior Tour. We [773] have an enormous amount of senior golf on television. It does not disrupt our telecast. It does not impinge in any way on the financial viability of the Senior Tour, and it's just not correct to suggest that we would want to maintain this rule because it looks good on television.

* * * *

Q. Now, Mr Finchem, if even one competitor in a PGA Tour or Nike Tour event was given a waiver from the walking requirement and permitted to use a cart in competition, do you believe, sir, that it would fundamentally alter the nature of PGA Tour and Nike Tour competitions?

A. I do.

Q. Why, sir?

A. For two reasons. One, it works toward taking the aspect of walking out of the game. If all the competitors [774] don't have to do it, it removes it as a key ingredient to test the competitive capabilities of players.

Secondly, I believe that one of the key and fundamental things about athletic competition is that the challenge be the same for everyone. That the rules be the same for everyone, whether it's the gridiron, in the tennis court, or the baseball diamond, or the World Cup ski slope, that the rules be the same for everyone.

And once you start to change that you fundamentally, fundamentally change the way athletes are measured. Athletics is all about bringing your physical attributes to the same playing field versus your competitor and using the same rules to test who is better on a given day. And just one

competitor being allowed to have—play by a different set of rules undermines that.

* * * *

[775] Q. Mr Finchem, would you agree, sir, that professional golfers who participate in PGA Tour and Nike Tour events all bring different physical attributes to the start of the competition?

A. Absolutely I mean, for example, if driving distance was the most important part about playing the game, I guess John Daly would win every week. He doesn't. That's one of the great things about the game of golf. There is a certain set of challenges that present themselves to the competitors, and each of them brings their own physical attributes and deals with those in different ways, including the mental stress of the game, which, again, is linked inextricably, in our judgment, with the physical challenge of walking the golf course.

Q. Mr. Finchem, do you know of any way, sir, to attempt to equalize the different physical attributes of [776] participants at the start of the competition such as PGA Tour and Nike Tour events?

A. No, I don't know of any way to do that. You know, with regard to this particular case, I wish there were. But I don't. I don't know how you can make rules that can artificially equalize the playing field when you start providing different support for different players. If I did have a way, I would have advanced it. I just don't, and I don't know of anyone that does.

* * * *

[777] Q. Now, Mr. Finchem, does the PGA Tour keep track of scoring averages of members of the PGA Tour and the Nike Tour?

A. We do.

* * * *

[779] Q. Now, Mr. Finchem, can you tell from these documents that comprise Defendant's Exhibit 122 whether or not a stroke difference, on average, over the course of a year is significant as far as PGA Tour and Nike Tour players are concerned?

A. A stroke difference over the course of a year is [780] enormously—has an enormous impact on statistics and the money list.

* * * *

Q. Just so I understand, sir, one stroke difference on average between them meant the difference between being [781] ranked second on the Tour and ranked 25th on the Tour?

A. That's correct.

* * * *

[782] Q. Now, these numbers that we've been talking about, derived from Defendant's Exhibit 122, Mr. Finchem, is this part of the reason why the. PGA Tour is concerned about the integrity of the competition and making sure that all players participate under the same rules?

A. Absolutely. Because when we talk about ~ when we talk about changing a rule to provide for one player or [783] some subset of players, you have to take into consideration what it does to the overall fairness and equity of the competition with regard to all the other players.

* * * *

Q. Tell the court, if you would, Mr. Finchem, and let's disregard for a moment scoring averages over the course of the year, can you tell the court whether or not just one stroke during the course of the year, however many tournaments that may be, 30, 40, one stroke during the course of all those tournaments, can it have a significant difference in a player's placement in the PGA Tour or Nike Tour?

A. It can have an enormous difference.

Q. Would you explain that to the Court.

A. I will give you an example. There are lots of [784] examples, but last year Billy Andrade finished 31st on the money list. The difference between 31st and 30th is access to the Tour Championship, which was a two million dollar event at the end of the year, access to the United States Open, access to the Masters the following year. Billy Andrade was five dollars short of making the top 30. There's probably 40 different rounds of golf he played, maybe more, where one shot, all year long, would have made the difference between him finishing 31st and 30th.

* * * *

Q. Now, Mr. Finchem, is it possible, sir, for the PGA tour to quantify the competitive advantage that a competitor gets if a particular rule of a competition is waived as to that competitor?

A. I don't know how you would do that, no.

Q. Let me give you an example, sir. You know, do you not, that one of the rules applicable to PGA Tour and Nike Tour competitions is that the competitors are permitted to carry with them only 14 golf clubs in their bag?

A. That's correct.

Q. Can you, sir, in any way quantify or adjust for the [785] competitive advantage that a competitor might obtain if a competitor were permitted to carry more than 14 clubs in his bag?

A No, because the—the clubs used differ, based on where—what the player does during the course of a round. He may go out and play with seven clubs. He might use every club in the bag and wish he had a 15th. It depends on how his round goes and where he hits it and, you know, what his shot values are. How you would compensate for that in the rules or draw a distinction that says, okay, we could make it even, is just an impossibility.

* * * *

[788] Q. Well, are there certain golf courses or certain weather conditions or other factors that sometimes make the walking requirement more of a factor or more of an element in the competition than it might be in other situations?

A. Sure. You can—we play on golf courses all over the country, now all over the world. Some of them are hilly. Some of them are flat. We play in cold weather. We play in hot weather. The degree to which riding in a golf cart could be construed as an advantage, in fact it would be an advantage, varies based on the topographical conditions of the golf course, based on the weather, based on a variety of different factors.

* * * *

Q. * * * * There is language on the hard card, is there not, sir, relating to walking during the course of PGA Tour competitions?

A. Yes.

* * * *

[789] Q. Would you read that for the court, sir? What does it

A. It says: "The players shall walk stipulated round, unless permitted to rules committee."

Q. Now, let's concentrate on the —sir, "Unless permitted to ride by the committee."

Is there a—an understanding or procedure within the PGA Tour as to when that exception is to be applied?

A. Yes.

Q. What is it, sir?

A. Well, let me give you a moment of background. In the last 30 years, more and more golf courses have been constructed in this country that are built for some sort of real estate-related purpose. Unlike walking at where we play the Players Championship in Florida, which is what we call a

core golf course, they just have golf, or at the Augusta National or at Marion or many golf courses that are chosen by the United States Golf Association for their championship, we have many golf courses today that are strung out through hotels, business environments and largely residential areas. When those golf courses are constructed, there's a premium on creating the most [790] possible frontage to the golf course from a real estate value standpoint. Consequently, most of the golf courses constructed in the last 30 years have two loops, two nine-hole loops that often are separated by some distance, and then between the greens and the following tee there oftentimes are significant amounts of distance, as well.

To deal with that, we have authorized our tournament staff from time to time to provide shuttles for players to go between—most often this is the case between the 9th green and the 10th green on the golf course. Excuse me, the 10th tee. Sometimes between a green and a tee.

The reason we do that primarily is because of pace of play. On Thursdays and Fridays we play to give—to create the most possible playing opportunities for our competitors, we play the maximum number of players that we think we can get on the golf course. It varies in the winter of 132, all the way up to 156. The golf course is full.

When we create a pace of play problem because of a long, extended walk down a cart path, across a bridge, between the green and the tee, we are creating an unfairness, because if the pace of play slows down on this nine holes as opposed to the other nine holes, we are having players wait, and it's not the appropriate type of [791] competition we want. It creates unfair conditions.

We compensate for that from time to time by giving our PGA tournament tour—or rules officials the authority to provide shuttling in certain instances. I think right now on the PGA Tour and Nike Tour it happens a couple of dozen places. It's typically between the 9th green and the 10th tee. Occasionally between holes, as well.

There's also a safety factor in certain places. Some of these golf courses are built on significantly different terrain, and where there is—where there is wet pavement conditions, players typically still largely wear metal spikes, oftentimes for safety reasons the tour staff will recommend we go to a shuttle system.

Q. Is shuttling used in all tournaments, sir?

A. No.

Q. Does the tournament director, Mr. Finchem, have the authority to—to allow shuttling in any instance that he deems it appropriate?

A. No.

Q. What instruction, if any, Mr. Finchem, is given to the tournament director about what he can or cannot do in the way of shuttling, using the language that you've just read from the hard card?

A. The direction to the rules officials is that where [792] there are conditions that put great strain on the pace of play and/or safety constraints, that they are authorized to look at shuttling as a way to alleviate that. It's reviewed on an annual basis by our executive vice-president of competition. We do not use it unless we think it is necessary to the integrity of the competition.

Q. And, Mr. Finchem, is the tournament director authorized to use that provision that you just read from the hard card to allow a competitor to use a golf cart throughout tournament play?

A. No.

* * * *

[794] Q. In the qualifying tournament in past years, sir—

A. Yes

Q. —have competitors been permitted to use golf carts?

A They have.

Q. And what is the reason, Mr. Finchem, that competitors in the national qualifying tournament have been permitted to use golf carts in past years?

A. Well, I think there's a couple reasons. One is that the—we get an awful lot, in the thousands, of people who aspire to play the PGA Tour, who enter the qualifying tournament at the local level. Administratively it has been determined over the years that it's impossible to require them, all of those players, to —to get caddies, for the combined reasons of the availablility of that number of caddies at the first and second stage of qualifying, and I suppose, the cost of caddies, as well, plays some [795] role in that, as well.

In addition to that, the—in the early stages of qualifying, the competition is to go to a higher stage. And frankly, we get a lot of people who enter the qualifying tournament who have a quality of game that is not going to take them on to the next stage, and we view it as a winnowing-out process, if you will, but those are the basic reasons.

Q. Now, in this past year, 1997, Mr. Finchem, did the PGA Tour make a decision to alter the requirement or at least change the procedure with respect to use of golf carts at least in the finals of the qualifying tournament?

A. Yes, we did.

Q. Tell the court, if you would, sir, why the PGA Tour did that?

A. Actually I think the decision was made in 1996 for the 1997 qualifying tournament, if I'm not mistaken.

But the reason for that was to —we felt it was very important to try to make the finals of the qualifying tournament as much like the challenge that a player faces at the PGA Tour level as possible.

Over the years we have allowed carts, and the vast majority of players have used carts in the finals of the qualifying tournament. In 19—late 1994, early 1995, [796] after I became commissioner, one of the things that I learned from talking to a great deal of players was a concern about that aspect of the finals in the qualifying tournament. The objective of the Tour is to create the best possible competition

as a qualifier to come—before you come to play the PGA Tour, but a lot of players voiced to me in 1995 that they felt that not requiring caddies, having carts, did not create the same challenge level in the finals of the qualifying tournament as we have on the PGA Tour.

In the finals of the qualifying tournament, in addition to players who come up from first and second stage qualifying, any player who finishes 126th to 150 on the money list is exempted to the finals. So the players we have in the finals in most years are a mix of new players, of players who have had a history of playing on the PGA Tour. A lot of those players were very concerned about that. I began a process of talking to our board about changing that in late 1995. That culminated in 1996. We put it into effect it the 1997 qualifying tournament.

Q. Why didn't you do it earlier, Mr. Finchem?

A. Well, I wasn't commissioner. When I became commissioner, I used the transition to reach out to the players, learn an awful lot about different things that we could do better.

* * * *

[798] Q. Did there come a time, Mr. Finchem, in late 1997, a few months ago, when you were informed that Mr. Martin had made a request to use a golf cart during the finals of the qualifying tournament?.

A. Yes.

Q. How did that come to your attention?

A. Mr. Moorhouse brought it to my attention.

Q. And do you know how it came to his attention?

A. Yes. He copied me on a—a letter from—I believe from his lawyer. There might have been a doctor's letter with it. I believe there was a doctor's letter with it, [799] indicating that Casey had a disability that would preclude him from walking in the requisite number of rounds in the qualifying school third stage, and made a request for him to have special exemption to utilize a golf cart.

Q. What did you do in response to that request that you received from Mr. Martin or his lawyer?

A. I reviewed it with Ed Moorhouse, and Ed asked us what position we should take on it, and we determined that it would not be consistent with the rules that had been agreed upon for the third stage of qualifying. We denied the request.

* * * *

[804] Q. Explain, if you would, sir, how the Senior PGA Tour differs from the PGA Tour, itself, and the Nike Tour that we've been talking about for the last hour or so.

A. Well, it differs in a whole range of ways. The thing that separates PGA Tour and Nike Tour golf from virtually every other kind of competition at the professional level is that the reason you are there is because you performed at a certain level of competence. You compete in certain tournaments and your access to our tournaments is based on your quality of competition. There aren't any ifs, ands, or buts. That's the way it is.

The Senior Tour is different. The Senior Tour is [805] a combination of access from players who are playing pretty well now; that is, the current money list; and players who have played well over the course of 30 or 40 years. That's number one. That's a very fundamental difference.

Secondly, we don't have a cut on the Senior Tour. The reason is if we had a cut, some of the players who play off that all-time money list, who aren't as good now as they used to be and certainly aren't as good now as the better players are now, would be cut. And the sponsors certainly don't want to have any part of marketing the tournament without some of those great names playing.

Thirdly is we allow carts on the Senior Tour, and the reason we do so is because some of those players, once they get to a certain age, start to lose the ability to walk what amounts to, depending on where you are on the money list, five rounds of golf, two Pro-Ams and three competition

rounds without a cart. So 15 years ago the decision was made to provide carts to extend the careers of those great players. It is wholly different from the PGA Tour, where the—the—the effort of our organization is to provide the greatest possible challenge to the best players currently in the world on a whole range of levels. And consequently we also have a difference in the setup of the golf course. The golf courses are not quite as long.

[811] Q. Now, Mr. Finchem, does the PGA Tour, sir, tell PGA Tour and Nike Tour Player in which tournaments they must compete?

A. No.

Q. Does the PGA Tour have any ability to do that, sir?

A. No I wish we did, but we don't.

* * * *

Q. Do many players often opt not to participate in tournaments?

A. Yes, quite frequently, depending on the player.

* * * *

[812] Q. Does the PGA Tour, sir, have any control over the manner in which a member of the PGA Tour, the Nike Tour plays, other than to specify the rules governing the competition?

A. Absolutely not.

Q. Does the PGA Tour have any control over the type of clubs or the type of balls that are used in competition by [813] members of the PGA Tour or the Nike Tour?

A. Not the type, no.

* * * *

Q. Does the PGA Tour or the Nike Tour have—have any control over the type of shots or the manner in which a—a member of either of those tours actually plays the game during a tournament?

A. No.

* * * *

[815] Q. The PGA Tour does not reimburse players for the expenses they incur, in other words, for caddies or transportation or meals or lodging; is that correct?

A. Absolutely not.

* * * *

Q. And is it true, sir, that the—a PGA Tour and Nike Tour member must pay the expenses of acquiring his own clubs, balls or other implements that he uses in the course of competition?

A. He is responsible for that, yes.

* * * *

[832] T. Finchem-x

Q. And you have not been able to find a single document where the defendant has put in writing, prior to 1998, that walking is a fundamental part of its tournaments, have you?

A. A document that uses those words?

Q. Well, anything that the defendant has produced which either states or in some way—whether it states directly or indirectly, that walking is a fundamental part of the tournaments it produces?

A I don' t know of a document that says that, no.

Q. Now, you know that the game of golf, the essentials, the definition of the game of golf, is stated in the rules at Rule 1-1, don't you?

[835] A. Yes.

Q. And that definition of the game of golf, in its essentials, has been adopted by the PGA Tour, Inc. for its tournaments, hasn't it?

A. We accept the USGA Rules of Golf, and we reserve the right to amend them as we might see fit, which we have done from time to time.

Q. Right. But you haven't amended this definition of the game, have you?

A. No, we have not.

Q. And that definition talks about the game consisting of playing a ball from the teeing ground into the hole by a stroke or successive strokes, doesn't it?

A. Yes, it does.

Q. Now I'd like to talk about the scoring averages that you raised. I don't have any fancy charts, but am I correct that the people on the Senior Tour make their living playing professional golf, as well as those on the other two tours?

A. Many of them do, yes.

Q. And am I correct that one stroke can make a difference between first and second place on the Senior Tour, as well as on the other tours?

A. Yes, it can.

* * * *

[836] Q. All right. Now, you permit the amateurs in those competitions to use carts, though, don't you?

A. Occasionally, yes.

Q. Now, let's talk about the open and sectional qualifying rounds, those are held every week before each

tournament to determine who, besides your regular PGA players, will play in those events, aren't they?

A. Correct.

Q. And the open qualifiers held on Mondays are sometimes referred to as the Monday qualifiers?

A. Yes, Monday qualifiers.

Q. And from four to 14 players qualify to participate in official tournaments as a result of their performance in these open and sectional qualifying tournaments?

A. Typically four, that's correct.

Q. Depending on the tournament, whether it's a Nike Tour—

A. Few exceptions, basically four, but sometimes more.

Q. All right. And the purpose of these tournaments is to separate the wheat from the chaff?

A. Which tournaments?

[837] Q. The qualifying tournaments.

A. The purpose of the tournaments is to give an opportunity for players who are not otherwise exempt under the tournament to compete for a spot, usually four spots in the tournament out of 144 or 156.

Q. Right. But you are trying to decide which of all the competitors that want those spots are going to be deemed good enough to have a spot, right?

A. That's correct.

Q. And you don't want to have a golfer who's not as good get their way into the tournament, you want the best golfers to get into the tournament?

A. Well, when you talk about a one-day qualifier, what you are allowing into the tournament is four players who shoot the best score that particular day and that 18 holes, that's correct.

Q. Right. So you're trying to find the ones that have the highest level of skill?

A. If possible, that's correct.

Q. All right. And there are times when entrants from your Monday qualifiers go on and actually win the tournament, aren't there?

A. There have been times, yes.

Q. For instance, Mr. P. J. Cowan won the Nike Tallahassee Open in 1996, didn't he?

* * * *

[839] Q. And you require that to the extent possible the conditions in the open qualifying shall be comparable to those of the tournament site in conditioning, speed of greens, et cetera, don't you?

A. If possible, that's correct.

Q. And that is so that you can test golfing skill, isn't it?

A. As best as we can, yes.

Q. But you don't require in that document that the golfers in the open and sectional qualifying tournaments walk, do you?

A. No, we don't.

Q. You could include that requirement if walking were an important part of your competition, couldn't you?

A. Well, we could. But it's covered under the rules of competition.

Q. Well, professional golfers do not have to walk in Monday and sectional qualifying tournaments, do they?

A. We allow them to ride carts in Monday qualifying, yes.

* * * *

[841] A. No, I didn't say that. I said if the tournament committee determined that there was going to be—there was no requirement to walk in an open qualifying, just like the second stage—first or second stage of the qualifying school, it would most likely be in the Notice to Competitors, if you're searching for where it will appear. I will tell you that we do not require walking most weeks in opening qualifying, just like we don't require the first and second stage of the qualifying tournament. If that's what you're searching for, that's true.

* * * *

[843] Q. Now, there's a provision there about caddies and golf carts, is that right?

A. Yes, ma'am.

Q. All right. And am I correct that there's a similar provision in the earlier book for the regular PGA Tour?

A. I believe they're identical.

Q. And so in the PGA regular tour and the Nike Tour, it says that golfers must use caddies and not carts for all qualifying rounds, is that correct?

[844] A. That's what it says.

Q. But you said previously that golfers can use carts in qualifying rounds?

A. If the committee—our competitions are governed first and foremost by the rules of golf. As a committee, the competition has discretion to make certain determinations. It can make those determinations notwithstanding the regulations.

Q. So it's the tournament director who decides that carts can be used, even though this regulation is written here requiring—

A. He can in certain circumstances make that determination, yes.

Q. All right.

And is that determination of the tournament director in writing anywhere?

A. Is the determination in writing? It would be in the Notice to Competitors, or typically in the Notice to Competitors.

Q. All right.

Now I'd like to talk about Q school. Q school is used to determine who will be exempt on both the regular PGA Tour and. the Nike Tour, is that right?

A. Yes, ma'am.

* * * *

[845] Yes, it is.

Q. All right. And you take in about 1200 applications, and then you winnow those down and the top 168, as long as

they finish the Q school, will be members of either the regular or the Nike Tours, is that right?

A. What was the number you used?

Q. Down to 168.

A. Yes, they would be members on some level of access, that's correct.

Q. All right. The highest 37 plus ties become members of the regular Tour, and then all the remainder become members of the Nike Tour, just with differing rights, depending upon where they fall?

A. Differing levels of access; that's correct.

Q. All right.

So once the player makes it to the final stage, where you're down to those 168, he knows that he's on one tour or the other?

A. That's correct.

* * * *

[847] Q. Well, the way you decide who can become member of your tour is to use that qualifying tournament to select those players, is that right?

A. If you—if that's what you mean by the term selection, yes, I guess so.

Q. All right. And then until 1990, that Q school was used to determine eligibility just for the regular tour, because the Nike Tour wasn't in existence yet?

A. That's correct.

Q. Now, would you agree that the most competitive tournament that you conduct is Q school, because it is going to be what the players score in that tournament which will determine whether that player gets to play at all on your tours?

A. The most competitive?

Q. Yes.

A. I don't know how I can distinguish between levels of Competition. If you think—if you're saying does it mean the most—I don't know how to answer that. I guess you could argue it does. On the other hand, one tournament [848] during the year when a player is competing to maintain his exemption is just as important, or a player who is in a position if he performs at a certain level to earn entry into the invitational tournaments in the major championships. So that's just a subjective evaluation. I will say that it's an important competition, because it does determine access to the PGA Tour.

Q. And from a player's standpoint, which I guess would be the way you'd have to look at it, it's very important to the

players in the qualifying tournament that everybody play by the same rules, isn't it?

A. Yes.

Q. Now, am I correct, then, that from approximately 1965 to 1990, you let players who were proving their ability to play on the regular tour use carts in all stages of the qualifying tournament?

A. That's correct.

Q. And then from 1990, when the Ben Hogan Tour began, until 1997, you let players who were proving their ability to play in both the Nike and the PGA Tours use carts in all stages?

A. That's correct.

Q. And in those years, from 1965 to 1997, over 30 years, you tried to have the qualifying tournament mirror the official tournament as much as possible, but you didn't [849] think it was important to test walking?

A. No, I would say we didn't think it was important to test walking. Walking is an integral part of the competition as it's mixed in with all the other aspects of the challenge. We made a compromise on walking in the qualifying tournament for a variety of reasons, but I would not say it's fair to say that we didn't think it was important.

In fact, when we reviewed it three years ago, we made the determination that it was so important that it should be reinstituted, at least at the final level, even though we recognized the logistics made it very difficult at the first and second stage, and we made that change so that in 1997, at that qualifying tournament, walking was required in the finals.

Q. That was in March of 1997 that you made the—

A. That's when the board made me final determination to approve the plan that we had forwarded sometime in 1996.

Q. Now, it is the PGA Tour itself that conducts the qualifying tournament, isn't it?

A. Yes, it is.

Q. And your hard card is effective in those tournaments?

A. Yes, it is.
Q. In all stages?
A. Yes, it is.

* * * *

[850] But the players weren't required to follow the requirement on the hard card that they walk?

A. No.

Q. Now, in those 30 years, if a player wanted to walk, and carry his clubs, he was prohibited from doing so, wasn't he?

A. Caddies have always been required on the PGA Tour.

* * * *

Q. The player would actually be prohibited from walking carrying his clubs?

A. That's correct.

* * * *

[853] Q. During the 30 years that you operated the Q school, from '65 through '97, you made the Q school golfers play under conditions that included narrow fairways, et cetera?

A. My understanding is that the PGA Tour is always taking steps to have the qualifying tournament competition reasonably mirror, as much as possible and feasible, the PGA Tour competition, yes.

Q. Including those items I just stated?

A. Yes.

Q. Okay. But your position is that you had not tested walking because you wanted to save the participants money?

A. No, I don't think I said that.

Q. Okay. Is that part of the reason?

A. I think some people on our boards currently think that was a reason. I think that the logistics of having 1100 people play with caddies is a very difficult thing to administer and require at multiple sites around the country. Cost is a factor, but it just is one of the factors involved in the administrative difficulty of making that a requirement, as it is sometimes on Monday qualifying, and that's why we have over the years

not required it until two years ago, when we made the determination that once you got to the.final stage you were so close to playing on the PGA Thur, we should take the

[864] Q. Now, in Q School, in the first two stages, and for 30 years all stages, some—you permitted some to ride and some to walk, and you didn't have a concern about a perception that some were having an advantage, did you?

A. I think—I think that everyone was permitted. We didn't permit some to ride and some to walk. Everybody was permitted to have a cart who wanted a cart.

* * * *

[871] A. Well, we could. Some of them still have to. But we also provide them, if they're an exempt player, we provide them the ability to pick up some of the access they lost by virtue of the injury.

Q. And before you put that into effect they did have to come back to Q school and prove themselves?

A. Well, they had to do whatever they had to do. There was no—there was no additional access provided them because of an injury.

Q. Right. But normally they would have had to be in one of the other either top 125 money-makers, let's use the regular PGA Tour, they would have to be in the top 125, and it they couldn't be because of their injury, their only way back in was to go to Q school?

A. That's correct.

Q. And if they didn't have to go to Q school, that would give them an advantage over other players who did have to go to Q school, wouldn't it?

A. Well, I guess so. But the way we look at it is that here's a player that is fully exempt for the year.

* * * *

[873] Q. Shot-making is obviously the primary skill of professional golfers.

A. I think from a skill standpoint, you'd have to admit that what—the key element of skill in the game of golf is shot-making, yes.

Q. Golf carts have become a part of the game of golf in the last 30 to 40 years.

A. Absolutely.

Q. In fact—

A. But I, again, counselor, I would, when we're talking about the PGA Tour, we're not talking about the, quote, game of golf, in my judgment. We're talking about 370 players out of the 25 million who play, and I would reiterate on the skill question that, yes, it's—that is the skill issue. But the challenge of the sport is a combination of executing with that skill golf shots under tremendous pressure, faced with significant physical challenge.

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[876] T. Finchem-ReD

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Q. Mr. Finchem, you were asked by counsel if you knew of any document that the PGA Tour had that said that walking was an essential—or I think counsel called it fundamental part of the game. And you said no, you didn't know of any document that said that.

Do you know of any document, sir, that says that anything is a fundamental part of the game?

A. No.

Q. The hard card that we've been talking about, Mr. Finchem, has the hard card, or its equivalent, contained the walking requirement since the inception of the Tour, to the best of your knowledge?

A. Yes, it has.

* * * *

[878] Finchem-ReD

Q. Okay. Now, counsel asked you about your discretion as commissioner under certain circumstances to waive

temporarily portions of the tournament regulations. Again, same question, Mr. Finchem. Does that discretion extend to you the right to waive or alter conditions of the competition or rules of golf generally applicable to the competitions?

A. No.

* * * *